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DISCARDED**

RICHARD TILLESLEY

ANIMADVERSIONS UPON
SELDENS HISTORY OF TITHES

LONDON, 1619



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UPON SELDENS
HISTORY OF TITHES

LONDON, 1619

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ANIMADVERSIONS
upon M. Seldens
HISTORY
OF TITHES,
AND HIS
REVIEW THEREOF:

Before which (in lieu of the two first

Chapters purposely pretermitted) is premised a Catalogue of leuenty two Authours, before the yeere 1215.

Maintaining the *Ius diuinum* of Tythes or more,
to be payd to the Priesthood vnder the Gospell:

By RICHARD TILLESLEY Doctor in
Diuinity, and Archdeacon of Rochester.

Fratres, non video qua fronte illi non offerimus Decimum, à quo accepimus totum. Cæsar. Arelat. hom. 14.

LONDON,
Printed by I O H N B I L L.
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TO
THE MOST HIGH
AND MIGHTY
PRINCE
JAMES,

BY THE GRACE OF GOD
King of Great Britaine, France,
and Ireland, Defender of the
Faith, &c.

 *F the duty of a Subiect
and seruant, were not a
most sufficient reason to
consecrate all labours
& endeavors to the ho-
nor and protection of his Lord and Ma-
ster: yet to whom are Animaduersions*

THE EPISTLE

more proper then to the *Magistrate*? Or to whom should the defence of the doctrine of *Tytches* be dedicated, but to the *Defendour of the Faith*? All these rights in your sacred *Maiesty* are supreme; and therefore haue emboldened me your poore vnworthy yet faithfull subiect and seruant, to implore your sacred patronage of these animaduersions on the *History of Tytches*, that so the defence of faith may extend it selfe to the maintenance of the preachers of the faith, and the temporall food of their bodies may be established by diuine and humane authority, who prepare, the spirituall foode of soules.

But more especially, that pious deuotion and zealous affection, wherewith your gracious *Maiesty* embraceth and upholdeth the *Ancient doctrine and discipline*

DEDICATORY.

discipline of the true primitive Church, to whom, perfectum est vitæ magisterium Ecclesiæ primitivæ actus imitari,

*Beda in ho.
Infra Octav.
Ascens.*

The imitation of Reuerend and sound antiquity, is the perfect schole of faith and life, by which patterne your sacred pen and sword hath suppressed all schismaticall and turbulent parties, and confounded all idolatrous superstition, and treasonable practises. This is that which hath most encouraged me, postulare ab

Imperatore defensores, to implore your Royall and religious patronage, who are the aduocate and nursing father of Gods portion the Church, and of the Churches portion, that is Tythes, due to God himselfe in acknowledgement of his supream right and dominion, and giuen by God himselfe, to them that serue at his Altar. And so much the rather for that

*Conc. Carthag. 5.c.9.
& passim in
Concil.*

Kings

THE EPISTLE

*August. inqu.
ex V. Test. c.
106.*

*Leu. 27. 30.
I. Sam. 8.
v. 15. 17.*

*Hesychius
in Verb.
Δεκατέμνειν.*

Kings as they are in their power the Image of God, who sayd, The Tythe is mine: so in the right of their sustentation haue the proportion of God, Tenth: which quantity in Tribute was so vsuall amongst the Grecians, that *Δεκατέμνειν* and *Τελώνιον* to tithe and pay Tribute, were as properly Synonymaes, as *Δεκατέμνειν* and *Καθιεργάσαι* to tytke and consecrate. So that to assume the protection of Gods challenged Tenth assigned to his ministers, is indeed to strengthen the reason of that right of Tribute allowed to your selfe. And surely this number Tenth, or Tithe, is sacred and very mysticall; and communicated onely to sacred and consecrated persons that are Gods Vicars vpon Earth, that is Kings and Priests; *decima Regis*, & *decima Sacerdotis*, who both stand in Gods place and receiue this portion as

Gods

DEDICATORY.

Gods upon earth ; and this number is so acceptable and familiar to God, as Philo speaks, that it doth properly belong to him, and by his assignement to those who resemble him.

Lib. de congress. quæred. eruditionis causa.

It was the saying of an Ancient in S. Augustine: Quibus satis persuasum esset, vt nihil mallent se esse quam viros bonos, his reliquam facilem esse doctrinam, To those, who only endeavour to be good men, all other instruction is easie, and among them this doctrine of Tithes need no enforcement nor defender. But couetousnesse hath so blinded religion, and custome so hardned conscience, and might so abetted sacrilege, that unlesse, Quod non præualet Sacerdos efficere per doctrinæ sermonem, potestas hoc imperet per disciplinæ terrorem, The magistrate com-

Epist. 20

Isidor. sent. lib. 3. c. 51.

a

mand

THE EPISTLE

mand what the Minister cannot persuade, Religion must giue way to sacrilege, and Christ to Mammon. It was the complaint of Goffridus Abbot of Vendosme to Goffridus Bishop of Chartres, Quod seculares homines sua consuetudine sanctæ Ecclesiæ auctoritatem conantur adnullare, That secular men by custome would abrogate the Churches authority, which is too true now. And it is the Church of Englands petition to her foster-father, to her Soueraigne, vt reddantur quæ sunt Dei, Deo. And since, Res Ecclesiasticæ quia diuini iuris sunt, in nullius bonis sunt, Church-goods because Gods right, are not to be accounted any mans possessions; Non sunt inter res mundi deputari credendæ sed Dei, as saith Prosper: Why should
men

Lib. 2. ep. 24

Two ep. 112.

*Lib. de vita
contemplat.
lib. 1. cap. 16*

DEDICATORY.

men who may not couet their neighbours goods, couet that which is Gods, and prescribe against diuine right, making custome and humane practise, and positieue law, the basis, or maior proposition of their syllogisme or conclusion, which they call conscience; that so they may lay sacrilegious hands upon Gods portion, that is tythes, which surely must all be voyd and vniust, as M. Selden ingeniously confesseth pag. 150. if tithes be due by diuine right vnto the Ministers of the Gospell. Wherein although I hope the Authours harty submission hath cleered his iudgement concerning any derogation intended by him against the diuine right of Tythes, yet because I am afrayd this History of Tythes hath afforded premisses to some, and to others great surmises of religious practise of sacrilege,

a 2

THE EPISTLE

crilege, while they see, and heare, but examine not } manifold quotations of Scriptures, heathen writers, Rabbines, Fathers, Councils, Imperiall Lawes, private Chartularies, and many uncouth and unusuall marginall notes, whereby they hope, nay resolve their owne desires are unanswerably defended. Yet, I hope, as Fulgentius saith of Heretikes and their Arguments, Nouum non est vt Heretici illis propositionibus se veritatem superaturos arbitrentur, quibus facillime superantur, so in this Historian, his owne authorities being faithfully discovered, do easily overthrow the credit of all his consequences.

*Lib. 2. ad
Monymum.*

*Saint Gregory sayd to Childebert, Esse Regem quia sunt & alij, non mirum; sed esse Catholicum quod alij non merentur; hoc satis. Giue me
leaue*

Lib. 5. ep. 6.

DEDICATORY.

leauē to applie it : Your *Maiestie* is a
great King, and a mighty Monarch,
whom God hath crowned with many
Kingdomes aboue your Ancestours, and
made you the vniter of Crownes : and
this is common to many others with your
Maiesty. Your *Maiesty* is a true Chri-
stian Catholike King, Defender of the
true, Ancient, Catholike and Apostolike
faith, which is almost proper to your
selfe; they that boast to be called Christi-
an & Catholike, may not compare with
your *Maiestie* in this stile. But I must
adde another word out of the same Saint
Gregory: *Regiam, quod maioris lau-* Lib. 9. ep. 57
dis est, ornatis sapientia potestatem.
This is your owne proper and peculiar, no
King can share with you in this honour;
you are a most learned & iudicious King,
who with your great knowledge and ad-
mirable

THE EPISTLE

*mirable pen, haue, and doe dayly adorne
your Regall power with your singular
wisdome & learning: Rex Theologo-
rum, a King of many excellent & lear-
ned Diuines, and Rex Theologus, a
King, a Diuine, who are Antesigna-
nus a leader among your great Bishops
and worthy writers: And which is hap-
pie for my Argument, a founder, a re-
storer, & an endower of Bishopricks
with Tithes. I beseech your sacred Ma-
iesty, let me, and this poore worke of mine,
march vnder your Banner, it will stand
against all enemies if it may but carry
your Maiesties name & protection. And
so I will end with the prayer of those Fa-
thers of the 12. Toletan Councel, to God
for their Prince, Vt det amatori Chri-
sti Serenissimo Domino nostro atq;
amantissimo Iacobo Principi, impe-
rare*

D E D I C A T O R Y.

rare clemēter, regnare fœliciter, habere de clementia fructum, obtinere de iustitia præmium, de pietate Trophæum, quo & hic inuictus victor hostiũ semper appareat, & post diuturna huius seculi curricula, ad regnum æternum cum suis omnibus coronandus perueniat : præstante Deo, & Salvatore nostro Domino Iesu Christo, qui cum patre & sancto spiritu in Trinitate, viuit & regnat Deus in secula seculorum. *Amen.*

Your Maiesties most humble

Servant and Chaplaine,

RICHARD TILLESLEY.



To the Reader.

Courteous Reader, *M. Selden* hath of late published a *History of Tythes*, a Booke much perused for the *rarenesse of the argument*, too much commended for the *Variety of the language*, and ouermuch admired for the diligence of Antiquic Collections: And to this *History* hee hath added a *Reuiew*, both to answer some *private objections* against his book, & to offer some *considerations*, wherby the wise & charitable intention of his *History* might be conceiued. Yet since, to the generall preiudice of the Church, both in profit and learning, by preiudicate Readers they are magnified; as if the *Church* heereby must be faine to leaue Gods interest, and relie on mans bounty; and yet (such is their conceipt) were not able to contradict the opposers: I could not but offer these *so-*
b *daine*

TO THE READER.

daine Animadversions, to thy iudicious consideration, lest thou bee led by *names* and many *strange quotations* (which thou hast not leasure or care to examine) in the danger of thine owne soule, to vndoe the *mother* of thy faith, the Church.

By which *Animadversions* when thou shalt obserue, how affection in this cause hath misled the iudgement of this Historian in this *by-Argument* from his profession, so that euen *heerein* (both in the *Grammar sense* of wordes and phrascs, wherein as a *Criticke* he is iudged curious; and in the *relation of ancient authorities*, wherein as an *Antiquary*, hee hath beene diligent, besides the seuerals of his incoherent arguments) he is with purpose to deceiue others, himselte deceiued; *Thou* wilt not hazard thy conscience, vpon the opinions of *private*, though learned men, but, submitting thy vnderstanding to the iudgement of *Gods Church*, relying vpon Gods word, in obedient deuotion wilt both doe and thinke as it teacheth I know the writings of vs *Cleargie men* vpon this *Theame* haue vsually preiudice with the Layety, as if our motions proceeded from desiring *theirs*,
rather

TO THE READER.

rather then *them*, although wee neuer so much protest with Saint Augultine, *Non quarimus vestras opes, sed vestram iustitiam*; Or, *Non ideo dico ut ista fiant in me*: We desire not your wealth but your righteous dealing; Or, I speake not this in my owne behalfe: or, with *P. Cluniacensis*, *Nec tam ad scribendum coegerunt lucra decimarum quam damna animarum*; Not so much the gaine of Tythes, as the losse of soules haue enforced vs to write. Yet howsoeuer, that duty which we owe vnto the soules of men, not to suffer the people of God to follow *strange opinions*, which either may diuert them from the true faith, or morall obedience of his word; as it hath prouoked many, so hath it also incited me, to the *refutation* of this booke; whereupon the *Sacrilegious practise* of these dayes may seeme to ground the deniall of the right of God, and by such questioning of the *Quota*, would denie the *Tota*: Whereas indeed the *Totum* of what they are, haue, or hope for, might bring them to that consideration of *Gerbertus*; *Ep. 28.*
Quid est quod das? aut cui das? nempe ex multo medicum, & ei qui omne quod habet, gratis dedit.
 What is that which thou giuest, O man? or to
b 2
whom

*Serm. de temp.
219. In Ps. 103
concion 3. de
parte secunda.*

Lib. i. ep. 36.

Ep. 28.

TO THE READER.

Chrysol. ser.
103.

Idem serm. 10.

whom dost thou giue? To wit, little of much,
and that to him, who gaue all that he had free-
ly: And so in expectation of a blessing: For,
Certe si non damus, si non accipimus, non queramur.
Surely if we giue not, let vs not grumble if we
receiue not; Let them prooue obedient sonnes,
for, *Reuera filium se nescit, visceribus caret, natu-
ram negat, ingratus est patri, qui authorem vitæ
sue non obsequijs placat, non deuincit cultu, muneribus non honorat*: Hce forgets himselfe to bee a
sonne, is vnaffectionate, vnnaturall, vngrate-
full to his father, who doth not please the Au-
thor of his life by obseruance, doeth not en-
deare him by his seruice, doth not honour him
with presents: And acknowledging *aliquam
partem offerendam esse*, that some part is to be of-
fered, they should rather allow *Gods claim*, and
*the Churches challenge, the Lawes ordinance, reason
and natures proportion, the Type of mans duety*, (and
all this and more is true *Tythes*) then be *conten-
tious or scrupulous*, vnder the patronage of such
a booke; which how insufficient it is, to say
no more, I submit to thy *censure*, and with it
my selfe.

Yet, lest any thing in the ensuing Animad-
uersions

TO THE READER.

uerfions might either seem difficult or procure preiudice, may it please thee to be aduertised,

Where in the Booke any thing is sayd to bee confessed, or produced by the Author, and some number of a page is added, the number hath reference to his booke, not to mine.

When thou obseruest Quotations which he citeth out of *Benedictus Lenita*, not answered by that name, but by the name of *Capitulars*, the Fifth, Sixth, or Seuenth Booke, Know, that they are all one, the three last Bookes being by him collected, and the first foure by *Ansegisus*: Which I admonish, lest thou, as my selfe, mayest be deceiued in name with what thou knowest in substance.

As also that,

Adreualdus de Miraculis Sancti Benedicti produced in the History of *Charles Martell*, and

Aimoynus de Vita S. Abbonis Abbatis, cited in the Reuiew, are in *Bibliotheca Floriacensi* collected by *Ioannes de Bosco*.

Vitus Amerbachius his *Epitome of Charles the Great his Constitutions*, is published after *Hincmarus* his *Epistles*, by *Ioannes Busæus*.

And that many authorities in the *Catalogue*

TO THE READER.

after produced, are out of the last Edition at
Colen of the *Magna Bibliotheca Veterum Patrum*.

And, that thou shouldest not lesse esteeme
the cause I vndertake; because I am not so farre
transported with passion as to answer the Au-
thors ill be seeming language with the like:
since yet in very many places hee imposeth,
*Lazie dull Ignorance, peevisb lealousie, impudent
coniecturing, patient idlenesse, base detraction, ma-
lice, negligence, confidence, ridiculousnes, grosse ab-
surdities, nothing but Title, beard, Habite, and
infinite other such scornefull attributes, on all
that shall oppose him; as if Solus saperet cæteris
volitantibus vmbris: And therefore is pleased
in great opinion of his owne worke, to adde
the exceeding commendations thereof by himselfe.*
But it is the cause not the man whom I in-
tend: yet withall I must tell him, that in no
age, could hee haue lesse fitly prouoked the
Clergie in this cause of God then now; neuer
more solide Iudgement, exquisite diligence,
various disquisition of all hidden learning He
must not looke to lurke in the darkenesse of
vnknown language, or priuate *Chartularies*, or
vnusuall

TO THE READER.

vnusuall *by named Bookes*. There are, that can trace his footsteps, and adde light to his Errors. That *Ignavia fallax*, against which his *Rubrike Title Page*, is with his Motto of Defiance *Summus Arma*, is not so generall as hee would intend: For what am I, amongst the thousands of riper yeeres and abstruser knowledge, and yet vpon confidence of the cause, and weaknesse of his Booke, haue aduentured in too short a time, the Encounter of this Adversary, who for *many yeeres* hath vnfortunately studied, and now *untimely* produced this errour of his Art? But since by his Submission to that Honourable Court of *High Commission*, hee hath acknowledged his fault, his person need not be opposed; which I rather manifest, because in many, the Doctrinal consequences from his Booke haue bred Errour, who haue not vnderstood that the Author of the booke hath beene sorry for the publishing of it: For whose sake as I haue vndertooke the answer, so for Truths sake I desire their patience

ANIMAD-



ANIMADVERSIONS
vpon the Preface of *M. Seldens*
History of Tythes.



F euer any Preface deserued the impatience of the greatest moderation, and in scorne and selfe-loue did preiudice the Learning and Religion of an incomparable Nation: what then may this Preface expect, but Satyricall and furious contradiction? There being no part, but fraught with supercilious contempt and full of the Rhetoricke of a censorious ouerweener. But wee haue not so learned Christ Iesus, that being reuiled, wee reuile not againe, through good report, and euill report in the conscience of Gods blessings, we endenour to please him who hath called vs to a profelssion of peace: Without passion therefore, I will select some passages out of his Preface, and there-against oppose such Aduersaries, or Animaduersions, whereby it may appeare, Si verum nos sapimus; quod veritas ei contradicar, non nos; that if my words be true, he is more opposed by Trueth then by me: And there I begin where the Author of the History, Protests,

Bernard. ep. 77.

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This History was not written, to prooue that Tythes are not due by the Law of God.

Animad. 1.

Yet h^e that frames a new opinion only to crosse it : Hee that strines to slight or answer all authorities that are made for it : He that censures the defenders of that opinion, with the title of confidence, ignorance, negligence, boldnesse, imperiousnesse, and such like, doth more dispute of it then becomes an vnpartiall Historian.

Pag. 1.

Nothing that belonged to the Title is purposely omitted.

Animad. 2.

Whether any thing that belonged to the Title were purposely omitted, I leaue to the iudgement of those, who shall obserue in the Catalogue, and in the censure, seuerall pertinent confirmations of the Title De iure Diuino, omitted; & hereof, being in the same Bookes, Epistles, Pages, he could not be ignorant, vnlesse he were but Canis ad Nilum, and no constant peruser.

Animad. 3.

No peece of it is stolne from any other mans notes:
Whether any of it were I strine not to enquire, neither if it were should I insult vpon it, especially if the ingenuous Writer would acknowledge by whom he profited: Benignum etenim est, & plenum ingenii pudoris, faceriper quos profeceris, saith Pliny: whereas, Reprehensio ne dignum esset, maiorum tacere nomina, & eorum sibi appropriare ingenia: He were worthy reproofe who concealeth the name, and doth arrogate to himselfe the inuention of the ancient. Yet in his Epistle Dedicatory, a great part of it, is confessed, to be lent him by anothers able Direction, so that he restores rather then giues it, he borrowed helpe, and doth offer onely whatsoeuer is in this of his owne also, They are his words,

Ad V^l Spasian.

He

V P O N T H E P R E F A C E.

He intended not to teach any innouation by an im- *Pag. 2.*
perfect patterne had from the musty reliques of for-
mer time.

I well belecue he entended not to teach any innouation, *Animad. 4.*
euen by the perfectest patterne he might haue, from the
mustie Reliques (for so hee calls the olde writings) of
former time, which if he had performed, it might haue
much aduantaged the Church, whom new Customes haue
much impayred.

His booke hath beene approoued by the censures of
such, as are of the choicest learning, ablest iudge-
ment, and trucly Decumatissimi, aswell in worth as
Title.

This I will neuer be perswaded of any that hath exami- *Animad. 5.*
ned the quotations, and throughly perused the work, wher-
in, such falsities, iniurious censures of writers, contra-
dictions, and many other impertinences are too fre-
quent. So that no ingenuous and learned Reader, but
will be backward to allow this for trueth, which is
onely a compacture out of the abuses and disobedience of re-
ligion and lawfull gouernment. Nimis peruerse se amat, *August ep. 7.*
qui & alios vult errare vt error suus lateat.

He accuseth all writers of this Argument, of negli- *Pag. 4.*
gence and ignorance, in taking one from another,
and not relating towards what is fit to bee knowne
touching the payment of the Hebrewes, &c.

How deseruedly he accuseth them of negligence or ig- *Animad. 6.*
norance, who undertaking to shew the History of Tythes,
(which none doe of purpose, but to inferre the right) haue
not so largely related so much of the payment of the Iews
practise of the Gentiles, of former Christians, of the

ANIMADVERSIONS

humane positive lawes, of the various opinions of past ages, besides the course of setting Tythes in Monasteries, &c. by appropriations, or consecrations. or the originall of incodations ; or concerning exemptions ; for mine owne part I know not ; yet I am perswaded that they wrot though not all. yet what was sufficient to the conclusion they intended. Why might not the practise of the Iewes be rather presupposed, then particularized, and only by the passages of Scripture, and authorities of the ancient commoner Authors bee pointed at, then bee expected from euery Writer, who either hath not the meanes to come by the bookes, or the skill readily to vnderstand the language, especially of the latter barbarous Rabbins ? If the only practise of the Iewes, not supposing the ground of diuine precept, might inforce the continuance amongst vs, then more paines in these Rabbines had beene necessary: But when the precept alone being prooued to belong to vs, can command obedience without their practise ; Then for to spend good time onely for ostentation of learning in perusing and quoting Rabbins had beene needlesse. I could only wish that the abundant maintenance of the Iewish Priesthood, might but procure for the Euangelicall Priesthood euen that lesser and rightfull portion of Tythes wherewith it would be contented. Yet heerein, from more skillfull Hebricians, the Authour must be aduertised, that his Rabbinic quotations are not all true, and few of them of his owne obseruation.

As for the practise of the Gentiles, who haue not pointed at enow authorities to free them from negligence and ignorance, although each good Writer hath not alike leasure from his profession, or delight in such studies ?
Though

V P O N T H E P R E F A C E .

Though herein the Authors diligence is commendable in the third Chapter. By which the progresse of that naturall præcept, though depraued in the Idolatrous vse, doth appeare (and Idolatrie is the Ape of Religion :) Whereout, if these conclusions might be inferred, that therefore the consecration of a Tenth part to God was naturall, and that herein the Gentiles not hauing the law, and doing by nature the things contained in the law, shew the worke of the law written in their hearts; This were a pertinent consideration: for why should they consecrate rather that part then another, vlesse as Hugo de S. Victore speaketh, They had beene taught and instructed by God; *Vnde enim, homo rerum suarum decimam potius quam nonam vel octauam vel aliam quamque partem offerendam esse scire potuisset, nisi à Deo doctus fuisset?* are his words to that lenſe fully. Rom. 2.

*Erudit. Theolog.
lib. 1. p. 11. cap. 4*

Concerning the practise of former Christians, those few whom I haue read, point at some, though not at all, as neither the Author doth, which if these daies would follow, as there were no generall Councils before Agobardus time concerning them, *Nulla enim compulit necessitas feruente vbique religiosa deuotione & amore illustrandi Ecclesias vltro æstuante:* There was no necessitie, the Religious deuotion of all, euery where, and the desire of bettering the Churches, freely abounding: So no Controuersie or such Historic would be needfull.

As for Humane positieue lawes; some out of opinion, that they binde not conscience; other out of consideration that the knowledge of the Secular lawes pertaine to other professions; others seeing no regard to the most ancient of them in the present practise, haue perchance, if known
6 3 them,

ANIMADVERSIONS

them, omitted them, and deserue not therefore such imputations of ignorance and negligence.

The various opinions of past ages, are in generall by some disciphered, though the authorities of the erroneous part be not so at large expressed, and inclined vnto, as by the Authour; yet their reasons are iudiciously answered, neither with negligence nor ignorance.

That none haue so variously shewed the setting of Tythes in Monasteries, Corporations, Colledges; I thinke was out of a dislike of them, not meaning to iustifie, but oppose either the appropriations (or as Master Selden calls them, Consecrations) of Tythes to such places, and not so much out of negligence or ignorance: Though concerning Colledges there is great difference, they being the Seminaries of the Clergie, and for the most part, must consist of such men in Orders; as also, the Spirituall Corporations of Bishops, and Cathedrall Churches doe.

Those which he calls Fables concerning the Original of infeodations, shall for the substance be prooued truthes, especially in the Historie of Charles Martell.

Of exemptions, none can speake well that consider the true right; But if any therein haue distinguished the Hospitalers, and those Knights of Saint Iohns in Ierusalem: or about exemptions haue committed other most grosse and ridiculous absurdities (so eager and bitter it pleased our Historian to be) yet some of his owne slippes with more gentle language manifested, may for hereafter temper his stile, since he is a man, and may erre: but that any writers haue so erred, is more then I know.

It is a common, but most decciuing Argument, affirmatiuely to conclude fact or practise of Tything from

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from what they see ordained by an old Canon of the Church.

*If any haue vsed that Argument in inferring the pra- Animad. 7.
ctise from the Canon, and that supposing or expressing
the dutie of the Law of God, he might well doe it; or else
suppose an irreligious practise to be generally embraced.
The examples opposed of Reparations of Churches, Te-
staments of the Clergie, are of things meere Ecclesia-
sticall, not Diuine, as Tythes are: In which Tythes if the
Laiie haue made alteration from the Canon, it was
because as Alcuin speaketh, Auara mens hominum de-
cimorum largitati non consentit, out of couetousnesse;
which yet for auoiding a publike scandall, hath beene to-
lerated in practise, to the preiudice, and at the perill of their
soules, who knowing the truth, yet would iustifie their acti-
ons from custome: what therefore Nationall customes
haue impaired in this right of Tything, might well haue
beene omitted by the honest Writer, who in charity hoped
each mans practise would haue answered the precept of God
published by the Church. The inference therefore of pra-
ctise from such Canons is fit in charitie, though not cer-
taine to experience; since the Canons for Tything are not
in respect to inferre practise, like the law of Plato, or of
Lucians men in the Moone, or of Aristophanes citie
of Cuckoes in the clouds, as he (I may say) prophanely
makes the comparison: But such which require obedience
of necessitie, vpon the fearefull perill of Canonickall censure,
which is confirmed in heauen. But sure such an Argument
is more reasonable and lesse Sophisticall, then against Ca-
nons, from concealment or ignorance, of whole euidence,
to inferre a negative practise clearely allowed.*

*In Epistola ad
Carolus Mag-
num citat.
p. 70.*

The

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Pag. 8.
Concer-
ning tythes
in London.

The Tythes of houses in London no otherwise haue place here, then as they occurre in the Actes of Parliament vnder H. 8. The 52. farthings paide on Sundaies, & the offrings paid on great Festiuall daies, could not properly be reputed among Tithes, neither in regard of their value; for they came to much more: nor in respect of their nature.

Animad. 8.

Although the Tything in London be not properly a Tythe, yet sure it is Nomine Decimæ, which is all one: which because of the inequality of mens estates, and the unwillingnesse of men freely to confesse their annuall personall gaine, from their seuerall trades; was appointed by the Common-wealth, to which (it may be to auoide scandall) the Clergie agreed, to place it vpon the Rents of houses: to the knowledge of the value whereof, the Parsons might come, without vrging them to confesse vpon Oath the truth, which in couetous mindes might often haue occasioned periurie.

*Constitut. de
Decimis cap.
Sancta. Verb.
Negotiatione.*

And Lindwood iudgeth the 52. farthings, if not in consideration of the prediall Tythes of houses, yet to be as oblations, which through custome might be due aboue the Tythes; and not (as the Authour would haue them) to withhold the payment of personall Tythes, which were also paid, as in the next Animaduersion may appeare.

Pag. 9.

For the nature of these Tythes of houses, I here offer a discourse, titled, A deuise how the Curates of London may be prouided for of sufficient liuings.

Animad. 9.

*This Discourse seemes to be a malicious Treatise, grounded vpon that false supposition, that onely Prædiall Tythes are due, Which the Authour would seeme to countenance, as if in the Leuiticall law there were no mention of
other*

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other Tythes ; which although it be true in the precept , in the last of Leuiticus, yet elswhere it is more generally said. Thou shalt not deferre to offer thy Tythes and first fruites, Exod. 22. in the vulgar, and Deut. 12. Decimas & primitias manuum tuarum, Inferte omnem Decimam. Mal. 3. Sanctifica Decimas tuas, -- Da altissimo secundum donatum eius. Eccles. 35. The Pharisee Tithed Ex omnibus quæ possideo, Luc. 18. of all that hee had. And because the Schoole doctrine is so much followed by the Authour.

The conclusion of Alensis out of some of those is, Si ergo ex dono Dei possidentur omnia quæ acquiruntur, iusto negotio vel arte, de illis decimæ dandæ erunt, If therefore the gaine out of any honest Trade or Art , be possessed by the gift of God, then of them Tythes must be paid. And himselfe Page 163. following these Schoolemen, hath thought such scruples about the difference of personall and pradiall Tythes , to haue beene needlessly handled by some, because both are equally due : The Morall law according to them not designing out reall possessions, to be more subiect then personall profit.

*Sum. p. 3 q. 53
M. 4. Art. 2.*

wherefore it is Absurde that the deuise should inferre, that therefore , by no meanes els there is due any liuing to the Priest, but by the consents of the people; and also auerring that the liuing which the Ministers haue had in London, hath beene by the consents of the people, which hath long time giuen them fourteene pence of euery noble, rated by the rent of houses. In the time of Roger Niger de Bileye Bishop of London, Circ. Annum 1235. in the Statutes betweene the Rectors of London , and the Archdeacon there,

Lib. Ms.

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amongst other offenders, Detentores Decimarum, The detaynors of Tythes in the city of London were excommunicated, Tythes therefore then were vsually payd.

And after, Si contingat aliquem parochianum esse rebellem Ecclesiæ suæ vel Capellano suo, --- non soluendo ijs parochijs oblationes debitas & consuetas secundum facultates suas, nec alia quæ ad eum pertinent soluere, &c. If it shall happen that any parishioner shall denie vnto their parish Church or the Chaplaine thereof, and not pay his due offerings and accustomed according to his ability, or other things which hee ought to pay, &c.

And after, Tribus diebus Dominicis post Natiuitatem Sancti Iohannis Baptistæ, in omnibus Ecclesijs à Capellanis annuatim publice fiat inhibitio, ne quis prædiorum siue gardinorum decimam fructuum asportet vel asportari faciat, nisi primo Ecclesiæ parochiali competenter inde fuerit satisfactum: Three Sundayes before Midsommer day in euery Church yeerely, let an inhibition be publikely made by the Chaplaines, that none carrie away by himselfe or others, his prædiall Tythes and of gardens, vnlesse first the parish Church bee meetly satisfied. Tythes therefore to be payd, and offerings were due not voluntary.

In eodem Ms.

And in the petitions of the Rectors of London (against the Dominicans and Franciscans who much impayred their profit) to the Archbishop of Canterbury and the rest of the Bishops then in a Synode; amongst many other complaints, this is one: Item fratribus confessi, qui, de negotiationibus suis Ecclesijs parochialibus iure Canonico solebant annuatim conferre decimas; à tempore quo confessionibus fratrum se submitunt, modo debita

Vide simile apud p. de Vincis lib. 1. ep. 37.

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bito, nec consueto negotiationes suas decimare non curant: Also they that confesse to the Friars Mendicants, who before were wont yeerly according to the Canon law to pay Tythes of their trading to their Parish Churches; Now since they confesse to those Friars, they neglect in due and accustomed forme to pay Tythe of their trading. And so in many other complaints remembering tithes, besides in the next complaint before this, the Rectors complaine, how that their parishioners, who Diebus Dominicis saltem & festiuis, tenentur visitare Ecclesias parochiales, & in eisdem Sacramenta & Sacramentalia recipere, ac seruitium diuinum deuote audire, nec non oblationes debitas & consuetas in Missis solennibus offerre: Ad loca fratrum prædictorum se transferunt, & Ecclesias parochiales suas spernunt & relinquunt desertas, & sic debita iura Ecclesiæ quibus antiquitus Ecclesiæ sunt dotata & fratribus conferunt, At leastwise on Sundayes and Festiuals are bound to frequent their parish Churches, and to partake the Sacraments and Sacramentals there, and to heare deuoutly diuine seruice, as also to offer at solemne Masses due and accustomed oblations: Now they goe to the places of these Friars, and scorne and forsake their Parish Churches, and so bestow the due Rights of Church wherewith the Churches were anciently endowed vpon these Friars. Out of both which together, I obserue not onely personall Tythes to be payd; but also offerings, debitas & consuetas, vpon Sundayes and Holy-dayes; for which and not the Tythes, the fifty two farthings, according to Rent, it may be were payd; in that they are called due and accustomed, and debita iura quibus antiquitus dotata Ec-

ANIMADVERSIONS

clesia, whereby Lindwoods opinion cited by him, pag. 244. is confirmed, who either thought them payd for the pradiall Tythes of Houses, or for vsuall oblations. These petitions of the Rectors, were as I suppose offered to Robert V Vinchelsey Archbishop untill the yeere 1313. for the Sigle of the name is R. and the constitution of Benedict the successor of Boniface the eighth, is called Noua Constitutio, a new constitution; and the Canon at Vienna by Clement the successor of Benedict is not urged against them.

When the foureteene pence out of euery noble rent began to be payd I know not, and because Lindwood doth not remember it, I suppose it not to be so ancient, though the proportion bee greater then now is practised.

But the deuise reprehendeth the taking Casualties of Burials, Christnings, and V Veddings, &c. Which if they had their true Tythe they would according to the old Canons forgoe. Yet now if they had not such helpes, their infinite paines and care would haue the poorest reward, and the greatest quantity both of persons and estate, must want the greatest blessing of discreet and learned instruction, and pious peaceable deuotion; which without a sufficient and regular proportion of meanes, will neuer be encouraged to be fitted for, and fastned to such populous congregations. But the Clergie of London are better able to plead their owne cause, hauing more experience and euidence then my few yeeres and bookes can afford.

Pag. 11.

The testimonies were chosen by waight not number, not tooke vp at second hand.

Animad. 10.

How his testimonies were chosen by waight not by number, shall senerally be examined.

And

V P O N T H E P R E F A C E .

And whether he tooke them up at second hand, or no, is not materiall to me, if they prooue true; though it deserue commendations for his diligence if hee did not. It is his happinesse that he had the fountaines, the ancient Historians for his quotations, and therein I will trust vpon his relation; and he shall perceiue by what I write; Apud nos *Leo serm. 5. de Collectis.*
authoritatem patrum viuere eorumque doctrinam in nostra obedientia permanere, That the authority and doctrine of the Fathers and antiquity is obeyed and reuerenced by mee: Yet not contemning the later writers, whose iudgement I shall preferre before his, which by his leaue, in this argument, shall gaine no strength of truth in me, from his name alone (which I wonder hee should thinke of) but only from those authorities which hee hath designed truely and pertinently out of seuerall olde writings. *Pag. 11.*

I neuer was so farre engaged in this, to torture my brains, or venter my credit, to make or create premisses for a chosen conclusion that I rather would then could prooue. *Pag. 12.*

I am sorry in this disquisition of Truth (which though he sought I am sure he found not on that part to which hee inclineth) his protestation should not deserue more credit; especially in that part, where hee sayth, that hee did not make or create premisses for a chosen conclusion which he rather would then could prooue; And that his premisses made what conclusions or coniectures he hath and were not bred by them. Against which againe, I oppose this protestation, that whereas hee hath proposed to himselfe the conclusion, That arbitrary consecrations were an originall right of the duty of Tiths *Animad. 18.*

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August. 17. 28.

and in that consideration would binde mens conscience to abstaine from profaning them: and, Licet nemo faciat optando vt verum sit quod verum non est, tamen si fieri posset optaret vt hæc sententia vera esset, as S. Augustine speakes of a truer opinion; Although none by wishing can make that true, which is not, yet if it could be, he would wish that opiniõ to be true: yet that by no waighty, or substantiall authority for the premisses; he hath prooued at any time in Christianity, a lawfull right of detayning Tythes before the duenesse of paying; or, an Arbitrary free disposing thereof Canonically euen in the Translation to other places: without the first whereof, they are not properly Consecrations; and without the second not Arbitrary.

Concerning infeodations, appropriations, inuestitures, &c. Whether his premisses inferre the conclusion, or shew the will of his weakenesse, shall in the seuerall passages be left to the iudicious Reader. And by that I hope which shall be proposed, the old way, which is the good way, the common and true opinion, had better through patient idlenesse (as he calls it) haue beene defended, then after a new course of disquisition to haue come not so much as to the base Court of Truthes Sanctuary, but euen to a toilesome maze of error: It had beene better to haue beene an Apodeictick then a Scepticke.

Page 13.

For the performance in the behalfe of the Clergie, &c.

Animad. 12.

His performance in the behalfe of the Clergie, in collecting so much humane positie lawes, for the payment of whole Tythes, is so farre worthy commendation; in that it sheweth the consent of so many wise assemblies, to the clayme

V P O N T H E P R E F A C E .

clayme of Gods right, which yet not from them, but from Gods precept we require of the consciences of men; whom, if we cannot perswade them to be due by the law of God, we must intreat the Supreme Magistrate, the authority and executioner of lawes, by the severall penalties to restore the rightfull inheritance of God: And by customes, statutes, or civill disposition, not to suffer the rights of Holy Church Gods assignee to be impeached, since so many humane positive lawes have manifested and offered the diuine right to obedient performance.

*I wish that as the lawes themselves especially the more ancient doe professe the Ius diuinum in their constitution, so he had acknowledged it; then his endenours had beene truely thanke-worthy of the Clergie, and the proposall of such lawes might not have seemed a Derogation from the diuine right which is claymed, nor this inferior and humane right of positive Title, have seemed to prejudice the superior and celestiall sunne shine of diuine interest. But since his intention was otherwise, the thanks is onely due to his paines, not purpose of producing them, whereout some others may (though hee would not) ground the confirmation of the Truth indeed: which others wisely doe, while they talke of them as supposed due also by humane positive law of practise, not thereupon grounding an Actio cōfessoria, but ex Conditione ex lege, *Vide Selden, pag. 151.* vel Canone; which both may bee requisite in the same cause, the one to demand a right, the other to require a penalty.*

The Dominican and Franciscan Friars, had they *Pag. 14.* sufficiently thought of the Constitutions and practise of Christian states, &c.

I wonder

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Animad. 13.

I wonder M. Selden should say, the Dominican and Franciscan Friers should out of not sufficient thinking of the right by humane lawes, come to the heresie of calling Tythes Almes; whereas it was out of the neglect, as hee acknowledgeth pag. 166. whereby wee may obserue, what issue the Title by humane lawes, were like to haue amongst those, who are as couetous to retaine, as they were greedy to gaine, quibus præ pecuniæ charitate iustitia vilis est who for loue of gaine contemne godlinesse, as S.

Confess. l. 6. c. 8.

Augustine speakes. As for Wiccliffe and Erasmus; the errors and grosse liuing of the Times, made them enuie those that rich meanes (as they thought it) whereby not the search of truth, but the prosecution of sensuality and errour was maintained. But although such considerations if they were all true, as, of the owners conueyance, continuance of time, &c. might seeme to inferre a debitum iustitiæ, not only charitatis, yet that is but politicke iustice, not alwayes Christian, and signifies no more then as due by common law, which is a lesse tie of conscience, then the due of charity. And therefore they might thinke it no more then as Almes commanded by law, concerning which out of superfluity many of the ancient haue spoke no lesse of the duety: and haue accounted them at least wise vniust, who haue detayned Almes; making charity the Author, but Iustice the reason of the giuing, and haue so interpreted that verse in the Psalme, Dispersit & dedit pauperibus iustitia eius manet, &c.

Psal. 112. v. 9.

Pag. 15.

VVhat doe they else when they confound Tythes and consecrated lands together.

Animad. 14.

They that confound Tythes and arbitrarily consecrated lands giuen to the Church; in applying the same originall right

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right to both, erre in my opinion, if any such be. Saint Ambrose knew well how to distinguish betweene a Church, and other inheritance, Inter agros Ecclesiæ & Basilicam; the like must we make betweene lands and Tythes; nay and more, God hauing a right to Churches in that they are made his, though neerer, by dedication; but in Tythes because they are the Retribution to his prouidence, the tribute to his power, the reseruatiō out of his liberality, his owne, challenged, due inheritance.

Oratio de Basilicis tradendis.

This History hath by distempered malice, ignorance, or iealousie, beene cried downe in corners.

Ibid.

Sure their malice had more discretetemper, and their Ignorance more solide learning, and their iealousie more discovered reason who cried downe his booke in corners, then distempering selfe conceipt will acknowledge: their malice, was but the hate of falsehood, their ignorance but the modesty of not writing, and their iealousie, but the prophesie of what is to come: but how euer they would not I meane openly to crie out against it, if not crie it downe, without malice, though it may bee more ignorantly then those whom his words may intend: and not out of iealousie, but out of perfect knowledge of the ill consequence of his booke in the maintenance of the Clergie: although hee compare his workes to Frier Bacons most noble studies, and Reuchlin and Budes, and Erasmus rare labours, and thinke all blockes to learning, that shall not giue a passing approbation to his curious diligence.

Animad. 15.

VVhat hath a common Lawyer to doe (so they murmur) with writing of Tithing?

Page. 17.

In that a common Lawyer by profession, hath written a
e
History

Animad. 16.

ANIMADVERSIONS

History of Tithes, for my part I condemne him not, nor any other, if the matter were seasonable, and true, and onely a History, and were allowed; yet I could haue wished he had placed his paines vpon some more pleasing argument, whereout hee might haue had for malice, prayse, for ignorance, admiration, and no iealousies especially of the Church to whom he owes his obedience, to attend his indeuours. I will not define who is the proper agent vpon this Subiect. I am sure, that Office, which I unworthily beare, might haue best interest in all respects, especially if the ancient duety be considered; which was, in the custody, dispensation, iurisdiction of Tythes amongst other reuenues, besides the capablenesse of possession in himselfe, the induction of others into the right of possession, and some other cōueniences. And to that office both Theology and the Canon law should be no strangers: and the embracements also of Philologie, haue not beene denied that dignity, witnesse Petrus Blesensis, Iohannes Sarisburiensis; and before these, that honour of my poore dignity, his Master, and the restorer of learning in my mother the Vniuersity of Oxon, the famous Robertus Pullus, or Pullenus, or Pullanus sometimes Archdeacon of Rochester (as out of an Epistle written by Ascelinus Bishop there, against him, to Eugenius the Third, by conference of other writings, I haue certainly collected) not to name the Historian Henry of Huntington, or Syluester Gyraldus Cambrensis with others of our owne countrey. Whence, howsoeuer an Archdeacon, haue not thought it fit to write the History, yet my selfe that haue indeuoured to giue answer to this, may haue sufficient authority against any imputation of my interposing in such an argument.

*In Chartul. Ecclesie Roffens.
Videsis etiam
Bernar. ep. 205.*

An

V P O N T H E P R E F A C E .

And thus from these verball Aduersaries, I passe to the more reall obseruations, and Animaduersions on his History, not as a most censorious examiner, as hee requireth, nor yet as an yeelding enemy as he expecteth, but as a friendly admonisher to him, and a forward discoverer to others, of such defects, nay faults, nay falshoods of this confident and illconsequenced Booke. In causa in qua Deo Greg. M. Indict. placere cupio, homines non formido, 2. p. 78. In that cause wherein I desire to please God, I feare not men.

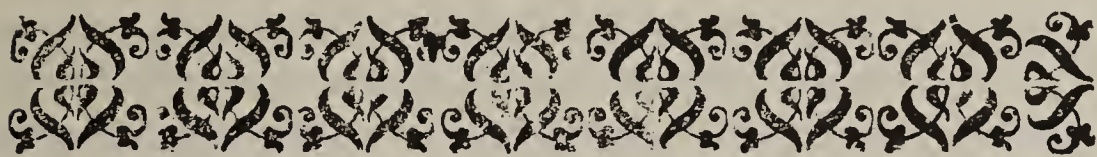




Errata.

P Ag. 6.lin.12.percipientes lege Accipientes. p.17.l.21.Decimarum.
 l.Decimarum dato. p.26.18.exhibitis l.exhibetis. p.71.11.apparant-
 ly annexed l. apparantly that tythes were annexed. p.86. 14.out of l. one
 of. l.1.24.Agrippienfi l.Agrippinenfi p. 100. 10.would, for l would for.
 p 102.2. that *deleatur*. p.120.33. Approbations l.Appropriations. p.125. 4.
 action l.actions. p.158.14.Exercendam l.Exercenda p 177.34. as that *de-*
leatur. p.207.6. Reade thus, Right of arbitrarily disposing ; the iurisdic-
 tion which the common or secular law had formerly challenged and exer-
 cised, in detayning the right of Tythes (between the Priests and Parishio-
 ners) grew out of vsc.





ANIMADVERSIONS

upon the HISTORY.



He Authours first and second chapters, *Of the testimonies of Scriptures and practise of the Iewes* (whereon according to my Profession, I most intended to haue placed my *Observations*) haue beene learnedly censured, and the authorities of *Scripture* which are there proposed, haue beene exactly pressed by that most religious and most worthy Knight *Syr Iames Sempil*; whose loue to the house of God, shall be gracious both with God and good men: And the *Treatises of the Diuine right of Tithes*, promised by many, must insist thereupon. I haue therefore vpon due respect (for to vse *S. Hilaries* phrase, *Quid tantorum virorum doctrinis atque dictis, inscrimus torpentia ingenia, atque sensus hebetes, atque temerarios?*) neither interposed my censure, neither preuented their censuring: Yet whereas, according to the wise iudgement of *Vincentius Lyrincsis*, *Ecclesiasticall tradition after Scripture, as an interpreter, is needfull to conuey the true sense of Gods Word with more euidence to the peenish*. What that noble Knight did purposely omitte, I haue aduentured, not bawking any helpe of *M. Seldens*, or other mens writings, to propose a *Catalogue of the ancient Fathers, and succeeding Writers*, whereby both his and our *Churches* iudgement may be freed from the suspicion of *noueltie*, and the Authour, and whosoever fauour the opinion of his booke, may be brought to consideration, how many *holy Fathers*, whose liues and deathes, God hath made glorious by miracles, by whose learned and

Hilarius de Synodis.

A

godly

Aimoinus.

Cap 4. & 39.

godly writings, both Heresie was confounded, and the Trueth conueyed vnto vs, are opposite to their *politike new found fancie*: And yet so little reuerence had their gray-headed authorities, that either they are passed with censure, or contempt. *Aimoinus lib. 3. de gestis Francorum cap. 41.* Relates that when *Chilperick* would haue proclaimed *Sabellianisme* and perswaded *Gregorius Turonensis* to it, and yet in his reason confessed *S. Hilarie* and *S. Augustine* to be against him, that holy Bishop replied; *Cautum est, Domine mi Rex, ne & ille irascatur tibi, cuius illi fuerunt famuli, qui ut tu ipse fatearis, in ista credulitate sunt contrarij.* I compare not the errors together, God forbid, yet the aduise of that great Bishop belongeth to him; That since he acknowledgeth *S. Ambrose*, and *S. Augustine*, and *S. Gregorie* and others to be aduersaries to his intention, he would feare the anger of that God whose seruants they were. And following *Vincentius Lyrinensis* his wise admonition, *Quicquid non vnus aut duo tantum, sed omnes pariter vno eodemque consensu, aperte, frequenter, perseueranter, tenuisse scripsisse, docuisse cognouerit, id sibi quoque intelligat, absque vlla dubitatione credendum.* Whatsoeuer the vnanimous consent of continue antiquitie, hath constantly held, writ, taught; that without doubting is to be beleueed: He would retract his new opinion, and acknowledging his last errour, he would returne to the gracious fauour of the *King* and *Church*, whom if by disobedience he neglect, would shewe more supercilious pride and youthfull folly, then either would be seeme subiect or Christian.

Before the authorities, let the Reader obserue these three Propositions, which may state both the question, and interpret the Ancient.

1 That the Doctrine concerning *Tithes* was euer that they were due *De Iure Diuino*, as appeares by the Fathers in time of persecution, when they could not haue them generally paid, as *Irenaeus*, *Origen*, *Tertullian*, *Cyprian*.

2. That alsoone as persecution ceased they were *recepta in moribus hominum*, before they were giuen to the Church by
any

any Imperiall or Ecclesiasticall law, as appeareth by those Fathers that liued in the flourishing time of the Church in the next 300. yeres, as *S. Chrysostome, Hierome, Augustine, Ambrose*, and many others.

3 That the lawes Imperiall & Ecclesiasticall concerning *Tithes*, doe declare the right of *Tithes*, not giue them nor the Right, and they doe adde Ciuill and Ecclesiasticall punishments on the *Non-payers* rather then decree the payment, as in the Capitulars is manifest.

The *Catalogue* shall be disposed according to their seuerall precedence in antiquitie, and onely those at large insisted on, who directly, or by necessary consequence, maintaine the *Diuine right of Tithes or more*: Which consequences shall be onely briefly deduced out of them, not to stay the more learned reader in the English, nor yet defraud any of the inferences.

The first shalbe *Irenaus, Qui proximus fuit tēporibus Apostolorum*, as *S. Basil de S. S^{to}. cap. 25. He lib. 4. cap. 20. saith, Sacerdotes sunt omnes Domini Apostoli, qui neque agros, neque domos hereditant hic, sed semper altari & Deo seruiunt; De quibus & Moses, Non erit sacerdotibus Lenitis in tota tribu Leni pars, neq³ substantia cum Israel, fructificationes Domini substantia eorum, manducabunt eas. Propter hoc & Paulus, Non inquiero, inquit, datum, sed inquiero fructum. Discipulis inquit Dominus, Leviticam substantiam habentibus, &c.* The Apostles are the Priests that serue at the Altar: that must eate the Lords parte: that must haue the substance of the Leuites; not of gift, but right; Of them spake Moses; *Therefore are tithes due to them by the Law of God.* In the same booke, cap. 27. *Et propter hoc Dominus pro eo quod est, Non mœchaberis, non concupiscere præcepit: & pro eo quod est, Non occides, neque irasci quidem, & pro eo quod est Decimare, — omnia quæ sunt pauperibus diuidere, Hæc omnia non dissoluentis legem erant, sed extendentis & dilatantis in nobis, and cap. 31. Quæ autem naturalia, & liberalia, & communia omnium, auxit & dilatauit. Therefore Decimare according to Irenaus, is plainly naturall.* And cap. 34. of the

Floruit anno
Domini 180.

same booke; Offerre igitur oportet Deo primitias eius creature, sicut & Moyses ait, Non apparebis vacuus in conspectu Domini Dei tui, ut in quibus gratus extitit homo, in his gratus ei deputatus, cum qui est ab eo percipiat honorem, — Et propter hoc illi quidem decimas suorum habebant consecratas: Qui autem perciperunt libertatem, omnia quæ sunt ipsorum, ad dominicos decernunt usus, hilariter ac liberè dantes ea quæ non sunt minora, utpote maiorem spem habentes. To giue Tithes or more is a signe of our hope of heauen. Therefore.

Anno, 226.

2. Origenes. Quem post Apostolos Ecclesiarum magistrum, nemo nisi imperitus negat. as S. Hierome de nominibus Hebraicis, He, Hom. 11. in Numeros. Decet enim & utile est, etiam Sacerdotibus Euangelij offerre primitias: Ita enim & Dominus disposuit ut qui Euangelium annuntiant, de Euangelio vivant. Et sicut hoc dignum est & decens, sic è contrario & indecens & indignum existimo & impium, ut is qui Deum colit, & ingreditur Ecclesiam Dei, qui scit Ministros & Sacerdotes assistere altari, & aut verbo Dei, aut ministerio Ecclesiæ deferuire; ut de fructibus terre quos Deus dedit, solem suum producendo, & pluias suas ministrando, non offerat primitias suas Sacerdotibus. Non mihi videtur huiusmodi anima habere memoriam Dei, nec cogitare, nec credere, quia Deus dederit fructus quos cœpit, quos ita recondit, quasi alienos à Deo. Si enim à Deo sibi datos crederet, sciret utiq; munerando Sacerdotes, honorare Deum de datis & muneribus suis. Et adhuc ut amplius hac observanda etiam secundum literam ipsius Dei vocibus doceatur, addemus & hac: 'Dominus dicit in Euangelijs, Væ vobis Scribæ & Pharisei hypocrite, qui decimatis mentham, hoc est, decimam datis menthæ, & cymini, & anethi, & præteritis quæ maiora sunt legis, Hypocrite, hæc oportet fieri, & illa non omitti; Vide ergo diligentius quomodo sermo Domini vult fieri quidem omnimodè, quæ maiora sunt legis, non tamen omitti & hæc quæ secundum literam designantur. Quod si dicas, quia hæc ad Phariseos dicebat, non ad discipulos: Audi iterum dicentem ad discipulos, nisi abundauerit iustitia vestra plusquam Phariseorum & Scribarum, non intrabitis in regnum cœlorum. Quod vult ergo fieri à Phariseis, multo magis & maiori cum abundantia vult à dis-

à discipulis impleri. Quod autem fieri à discipulis non vult, nec Pharisæis imperat faciendum. Quomodo ergo abundat iustitia nostra, plusquam Scribarum & Phariseorum, si illi de fructibus terræ sue gustare non audent, priusquam primitias Sacerdotibus offerant, & Levitis decimæ separentur; Et ego nihil horum faciens, fructibus terræ ita abutar, ut Sacerdos nesciat, Levites ignoret, divinum altare non sentiat?

It is *impious* not to offer first fruits to the Priests of God, who giueth Sunne and raine. *He hath no thought of God, nor beleueth that God gaue the fruits of the earth, who parteth to God none of his owne gifts and blessings. We are taught by the word of God to offer them. Moreouer, the Lord saith in the Gospel, concerning the Tithing of the Pharisees, these things ye ought not to haue omitted. But if any obiect, that he spake to the Pharisees, and not to his disciples, heare what he saith to his disciples. Except your righteousness exceed the righteousness of the Scribes and Pharisees; What then the Pharisees did, must bee exceeded by the Disciples. And what hee would not haue his disciples doe, he would not command the Pharisees to doe. This is the summe of Origen; and his arguments are powerfull to prooue the Diuine right of Tithes.*

3. Cyprian, *lib. de unitate Ecclesiæ. Domos tunc & fundos venundabant, & thesauros sibi in cælo reponentes, distribuenda in usus indigentium pretia Apostolis offerebant. At nunc de patrimonio nec decimas damus, & cum vendere inbeant Dominus, emimus potius & arguimus.* He reprehends the not equaling of the Iewes in giuing Tithes, since we will not imitate the Apostles times to giue all. But by the Law of God wee ought at least to equall the Iewes. *Therefore.*

The same, *lib. 1. ep. 9. Scriptum est, Nemo militans Deo, implicat se molestiis secularibus ut possit placere ei, cui se probauit: Quod cum de omnibus dictum sit, quanto magis molestiis & laqueis secularibus obligari non debent, qui diuinis rebus & spiritualibus occupati, ab Ecclesiâ recedere, & ad terrenos & seculares actus vacare non possunt? Cuius ordinationis & religionis formam Leuitæ prius in lege tenuerunt, ut cum terram diuiderent, &*

possessiones partirentur vñdecim tribus, Leuitica tribus, quæ templo & altari & ministerijs diuinis vacabat, nihil de illa diuisionis portione perciperet. sed alijs terram colentibus, illa tantum Deum coleret, & ad victum atq; alimentum suum, ab vñdecim tribubus, de fructibus qui nascebantur decimas perciperet. Quod totum fiebat de authoritate & dispositione diuinâ, vt qui operationibus diuinis insistebant, in nulla re auocarentur, nec cogitare, aut agere secularia cogerentur. Quæ nunc ratio & forma in Clero tenetur, vt qui in Ecclesia Domini, ad ordinationem clericalem promouentur, nullo modo ab administratione diuina auocentur, ne molestijs & negotijs secularibus alligentur, sed in honore sportulantium fratrum, tanquam decimas ex fructibus percipientes, ab altari & sacrificijs non recedant, & die ac nocte cælestibus rebus & spiritualibus seruiant. The same reason and forme is obserued in the Gospel for the maintenance of the Clergie, which was first in the Law, that he that goeth in Gods warfare should not be entangled in worldly affaires. Therefore, Tithes or more *de Iure diuino*.

Anno, 355.

4. S. Hilarie, in his booke *Explanationis in Matth. can. 24.* Quia ea quæ in decimis menthæ & anethi lex præscribit, — Quia decimatio illa oleris, quæ in præformationem futurorum erat utilis non debebat omitti. Tithing of herbes not to be omitted, because profitable for the example of future times. Therefore now by that precept due.

Anno, 370.

5. S. Gregorie Nazianzene, *Orat. 5.* Christus appellatur Melchisedech, vt accipiens decimas a summis illis Patriarchis. If Christ as receiuing Tithes, be called Melchisedech, then he receiued them, and if he, his prielts.

Anno, 374.

6. S. Ambrose, *Serm. 34. in Feria 3. post Primam Dominicam Quadragesimæ.* Quicumque recognoscit in se quod fideliter Decimas suas non dederit, modò emendat quod minus fecit. Quid est fideliter Decimas dare, nisi vt nec peius nec minus aliquid Deo offerat, aut de grano suo, aut de vino suo, aut de fructibus arborum, aut de pecoribus, aut de hortis, aut de negotijs, aut de ipsa venatione sua? Quia de omni substantia quam Deus homini donat, decimam partem sibi seruauit; & ideo non licet homini retinere illud

illud quod Deus sibi referuauit. Tibi dedit nouem partes; sibi vero referuauit decimam partem: Et si tu non dederis Deo Decimam partem, Deus tollet à te nouem partes. — Nam qui non vult Deo reddere Decimas quas retinuit, & homo non studet reddere quod iniuste ab eo abstulit, non timet adhuc Deum, & ignorat, quid sit vera pœnitentia, veraque confessio: God hath referued the Tenth part, He that payeth not the Tenth doth not yet feare God, nor know what is true repentance and confession. Therefore.

Idem, in Sermone in Die Ascensionis. Ille verè bonus Christianus, qui de fructibus suis non gustat nisi prius ex ipsis aliqua Deo offerat, qui Decimas Deo annis singulis pauperibus erogandas reddit. He is truely a good Christian that payeth his Tithes yeerely to God. Therefore.

Idem, in Comment. in Luc. cap. 11. lib. 7. Comparat collationem Decimarum etiam vilium fructuum, operibus: Iudicium vero & charitatem, fidei; Et inde infert; Sed ne rursus fidei nos studiosos faciat operum negligentes, perfectionem fidelis viri, breue concludit, vt de fide & operibus approbetur, Dicens, Hac oportuit facere, & illa non omittere, Workes are compared to Tithing of small herbes, as faith to iudgement and mercie. In the 11. of Luke; But Workes are de Iure diuino, though compared with faith. And therefore so must Tithes be.

7. *S. Hierome, vpon the third of Malachie; Quod de decimis primitijsque diximus, quæ olim dabantur à populo Sacerdotibus & Leuitis, in Ecclesia quoque populis intelligite, quibus præceptum est, non solum decimas & primitias dare, sed & vendere omnia quæ habent & dare pauperibus, & sequi Dominum Saluatorem; Quod si facere nolumus, saltem Iudeorum imitemur exordia, vt pauperibus partem demus ex toto, & Sacerdotibus & Leuitis, honorẽ debitum deferamus. Vnde dicit Apostolus; Honora viduas, & presbyterum duplici honorem honorandum. Quod qui non fecerit, Deum fraudare & Dominum supplantare conuincitur, & maledicatur ei in penuria rerum, qui parcè seuerit, parcè & metat, & qui in benedictione seminat, in benedictionibus fructus colligat abundanter. Christians are commanded to*

Anno, 390.

to giue Tithes and first fruits: He that doth not, spoileth and deceiueth God. *Therefore.*

Anno, 398.

8. S. Chrysostome, *Hom. 35. in Genes.* Remuneravit Melchizedechum, & decimas ei segregauit, de omnibus quæ attulit; Hoc loco doctor fit omnibus, ut declarantes gratitudinem, primitias eorum quæ sibi à Deo concessæ, offerant. Abrahams example, teacheth all in gratitude to offer First fruits or Tithes of all things which God hath giuen. *Therefore due.* And *Hom. 18. in Acta Apost.* Parumne est oro torcular benedici? Parumne est Deum ex omnibus frugibus ac decimis, prius partem ac decimas accipere? Ad pacem Agricolarum hoc vtile. The giuing of Tithes procures a blessing. *Therefore due.*

Idem, *hom. 4. in 2. cap. ad Ephes.* Quid enim non fecerunt hac in re Iudei? Decimas ac rursus decimas, Orphanis, Viduis ac Profelytis contribuerunt. Nunc verò admirando quempiam dicere solemus, decimas ille, vel iste dat, quanta quæso turpitudinis scatet, si quod apud Iudeos, nullius erat admirationis, aut celebritatis, apud Christianos iam sit, unde debeat admirari? Si tunc periculum erat Decimas negligere, perpende-quanti nunc istud fuerit? Entending to stirre vp the Peoples deuotion he alleageth the example of the Iewes herein, comparing *their* bountie with *our* backwardness; They did freely and willingly pay Tithes of all to the Priest, and another Tenth also to the Poore. But we Christians can scarce afford to pay our bare Tithes, and at length he concludes with this consideration: If it were a danger then to the Iewes not to pay their Tithe; consider then, how great a danger it must needs be now if we neglect it. *Therefore.*

Anno, 400.

9 S. Augustine, *hom. 48 inter 50. Serm.* Maiores nostri ideo copiis abundabant, quia Deo decimas dabant, & Cæsaricensum reddebant, modo autem quia decessit deuotio, accessit indictio fisci, nolimus partiri cum Deo decimas, modo autem totum tollitur: hoc tollit fiscus, quod non accipit Christus. Our forefathers did therefore abound with plentie, because they gaue their Tithes to God, and paid their tribute to Cæsar, but now because deuotion is decreased, exactions haue encreased, wee
will

will not giue the tenth part to God, and now all is taken away, that which Christ cannot haue, Cæsar will.

Idem, in *Psal.* 146. *Exime aliquam partem reddituum tuorum, Decimas vis, Decimas exime*, quanquam parum sit; dictum est enim quia Pharisei Decimas dabant.—Et quid ait Dominus, *Nisi abundauerit iustitia uestra.*—Et ille super quem debet abundare iustitia tua decimas dat, tu autem nec millesimam das? In this dutie wee are commanded by Christ to exceede the Pharisees. Therefore no lesse due de Iure diuino.

Idem, in *Serm. ad Fratres in Eremo.* ser. 64. *Et si aliquis est agricola qui terram colat, de fructibus suis & ex ijs omnibus quæ Dominus ei donat, in decima Ecclesiam non defraudet, & de particula suâ pauperibus dare non negligat. Si negotiator est, & in hoc laborat, & ipse Deo non seruit de suo labore, vel decimam reddere noluerit, & de sua particula pauperibus ministrare non curauerit, ad nihilum ipse unâ cum pecunia sua redigetur. Et quacunque arte Dominus alicui personæ ingenium lucrandi donauerit, unde se & suos nutrire & vestire potuerit, & cum hoc superlucrari aliqua, post decimam, ex ipsa sua particula quæ sibi remanet, pro redemptione animæ suæ ac suorum, pauperibus hilariter donet.* If any one be a Husbandman that tilleth the ground, let him not defraud the Church, in the Tith of his fruit and of all those things which God hath giuen him, and let him not neglect to giue of his owne part to the poore: If hee bee a Tradesman and bestowes his paines thereon, and he doe not serue God of his labours, or will not pay his Tith, and takes no care to giue of his owne part to the poore; he himselfe together, with his money shall be brought to nought. And by what occupation soeuer, the Lord shall giue wit to any person to thriue, by which he may bee able to feede and cloath himselfe and his, and with it ouer and aboue gaine something, after the Tith, let him willingly giue to the poore, of his owne parte which remaineth to him, for the benefit of his soule.

Vide Sermonem de Tempore, 219. Which sermon is wholly for the payment of Tithes; and is published in English

by that worthy loue of Gods Church S. Henry Spilman, after his religious Treatise, *De non temerandis Ecclesiis*, in which sermon are as many arguments, almost as sentences, to proue the diuine right.

Anno, 430.

10. Eusebius Emilſenus, *sive quis alius homil. in Dominic. undecima post Pentecosten super verba Pharisei. Luc. 18. Phariseus stans hæc apud se orabat &c. Nihil horum reprehensibile est, Nam & Deo pro beneficijs gratias agere. & bis in hebdomada ieiunare, & de omnibus decimas dare, bonum valde est & laudabile.* None of these things (which the Pharisee there did) is reprooueable, for both to giue thanks to God , and to fast twice a weeke, and to pay Tithes of all things, is very good, and laudable.

Anno, 440.

11. Cassianus, *Collatione 21. (præter ea quæ citantur à Seldeno, pag. 47.) cap. 25. dicit, Lege Mosaicâ, vniuerso populo generalis est promulgata præceptio; Decimas tuas & Primitias offeras Domino Deo tuo: Itaque qui substantiarum, omniumque fructuum decimas offerre præcipimur, multo magis necesse est ut ipsius quoque conuersationis nostræ, atque humani usus, operumque nostrorum Decimas offeramus, &c. Et cap. 33. Quicumque soluit Decimas fructuum suorum, atque Primitias, aut partem pecuniarum, constrictus legis antiquæ sanctione distribuit.* Wee are commanded by the generall Law of Moses: Wee are bound by the decree of the ancient Law , and what is that but the morall which binds vs, and by this Tithes are enioyned; Therefore due by the Law of God.

Anno, 440.

12. Isidorus Pelusiota, *lib. 1. epist. 317. Hermينو Comiti; Preclare Dominum ornas cum nobis fructuum tuorum Primitias tribuis, decimamque partem ex ubertate terræ tuæ, ei à quo eam accipisti pendis; quam quidem tu in multa tempora habiturus es; Nunc quidem eorum quæ opus sunt, sufficientem usum tibi custodientem; post autem sempiternam voluptatem afferentem.* It doth much honour the Lord: It procures preservation of temporall blessings, and brings euerlasting pleasure. Therefore.

Anno, 490.

13 Cæsarius Arelatensis, *de Eleemosyna, hom. 2. Et qui*
non

non solum Decima nostræ non sunt, sed Ecclesiæ deputata, verum quicquid amplius quam nobis opus est à Deo accepimus, pauperibus erogare debemus. Est etiam locus notabilis, Serm. 14. post initium: Vbi etiam multa ex Augustino. Idem, hom. 37. Dominus dicit in Euangelio, Omnem decimationem vestram distribuite, Ipse per Prophetam, Inferte omnem decimam &c. postea citat locum Augustini per totum. The Lord in the Gospel and by the Prophet Malachie commandeth it. Therefore.

14. Eugippius in vita Sancti Seuerini, cap. 17. & 18. citatur pag. 47. Deuotissime frugum suarum Decimas pauperibus impendebant, quod mandatum licet cunctis ex Lege notissimum sit, tamen quasi ex ore Angeli præsentis grata deuotione seruabant. Et postea dicit Seuerinus, Si Decimas obtulissetis pauperibus, non solum æterna mercede frueremini, verum etiam commodis possetis abundare præsentibus. It is Gods commandement; It bringeth both eternall and temporall reward. Therefore.

15. Anastasius Sinaita, in quæst. 13. libri qui vocatur Dux vitæ, Quæstio est; Quantam suorum bonorum mensuram debet quispiam Deo offerre? In responsione ex Chrysostomo in Mattheum, post multa, sic ait; Si ergo is qui dat dimidium nihil operatur, quanti erit is, qui ne Decimam quidem præbet? Hee that payeth not, is not esteemed with God. Therefore.

16. Concilium Matisconense secundum Can. 5. Citatur pag. 58. Leges diuinæ consulentes sacerdotibus ac ministris Ecclesiarum, pro hæreditaria portione omni populo præceperunt Decimas fructuum suorum, locis sacris præstare, ut nullo labore impediti per res illegitimas, spiritualibus possint vacare ministerijs, quas Leges Christianorum congeries longis temporibus custodiuit intemeratas. Vnde statuimus ut Decimas Ecclesiasticas omnis populus inferat &c. The Lawes of God for the Priestes inheritance haue commanded all people to pay Tithes to the Priestes. Therefore.

17. Gregorius Mag. hom. 16. in Euang. citatur pag. 57. Vnde fratres charissimi, sicut offerre in Lege iubemini decimas rerum,

ita ei offerre contendite etiam decimas dierum. Ye are commanded in the Law (speaking to Christians.) *Therefore.*

Anno, 610.

18. Concilium Spalense siue Spanense citatum pag. 61. *Omnes primitias & decimas, tam de pecoribus, quam frugibus, diues simul & pauper, Ecclesiis suis rectè offerant;— Omnis rusticus & artifex quisquis de negotio iusto decimationem faciat.* — Si quis autem hæc omnia non decimauerit, prædo Dei est, & fur & latro, & maledicta quæ intulit Dominus (¶ Cain) non rectè diuidenti congerantur. He is a robber, a thiefe, is cursed as Cain, that payeth not prædiall and personall Tithes. *Therefore.*

Anno, 630.

19 Isidorus Hispalensis, in *Glossa ordinaria super Gen. 16.* *At verò Patriarcha magnus decimas omnes substantie sue Melchisedech sacerdoti post benedictionem dedit, sciens spiritualiter melius sacerdotium futurum in populo Gentium quam Læuiticum, — unde & sacerdotes ex semine Abrahamati, fratres suos benedicebant, quibus illi decimas, secundum Legis mandatum dabant.* Eadem citat Rabanus lib. 2. cap. 16. in *Genesin.* Abraham payed to Melchisedech, considering the Euangelicall Priesthood. *Therefore.*

Anno, 630.

20. Antiochus, hom. 120. *Quantum attinet ad Primitias, his exoluendis modis omnibus obstringimur, ex his etiamnum quæ sunt proprio quæsitæ labore, ex corporis viribus, quas benigne ipse suppeditat Dominus, quasque sua solius providentia suggerit, dum nostri prouidam agat curam, iuxta Scripturæ tenorem dicentis, — ubi multos subiungit Scripturæ locos, Hæc enim omnia propter mandatum da altissimo, iuxta datum ipsius & multipliciter retribuet tibi. In bono oculo glorifica Deum, & ne imminuas decimas manuum tuarum. In omni dato, hilarem fac vultum tuum, quia oblatio iusti impinguat altare, — Itaque, ceu dixi, homo omnis primitias ac decimas offerre debet Domino Deo: nec ullus est qui prætexere possit, ac tueri se velamine paupertatis; Nemo n. illa vidua pauperior vspiam inuenitur, quæ duo minuta obtulit; ceteris alioqui omnibus, ampliorem retulit gratiam: Præcipuè autem Monachi offerre Deo debent primitias ac decimas, nec eas modo quæ in conspicuo sunt, ac propalam videntur, hoc est, ex ijs quæ alio-*
rum

*rum munere distribuuntur, aut ex opere manuum resiliunt com-
moda; sed & spirituales &c.* Very many places of Scripture
are produced, and thence for the commandment sake, wee
offer Tithes to God. *Therefore.*

21. Exhortatio Ms. written about anno 700. citatur pag. 66. *Ille bonus est Christianus qui ad Ecclesiam frequentius ve-
nit, & de frugibus suis non gustat, nisi prius ex ipsis Domino ali-
quid offerat, qui decimas annis singulis pauperibus reddit, qui sa-
cerdotibus honorem.* Hee is a good Christian that doth it.
Therefore. Anno, 700.

22. Missa Aethiopica, tom. 4. Biblioth. SS. Patrum, cita-
tur pag. 66. *Rogemus pro ijs qui obtulerunt, munera sanctæ
unice quæ est super omnes Ecclesiæ, sacrificium scilicet prima-
rum decimarum gratiarum actionis signum & monimen-
tum.* Tithes the gifts of the holy Church the signes of our
thankesgiuing. *Therefore.*

23. Beda, Histor. Eccles. lib. 4. cap. 29. De Eadberto Lindisfarnensi Episcopo. *Eleemosynarum operatione insignis, ita ut
iuxta Legem Moïsis omnibus annis decimam non solum quadru-
pedum, verum etiam frugum omnium & pomorum; nec non &
vestimentorum partem pauperibus daret. Et in Scintillis, cap. 29.
Habet titulum de Decimis, Ubi textus Malachiæ 3. Pauli ad
Hebræos 7. de Filijs Levi Sacerdotum accipientes &c. & postea,
Augustini verba citat varia. Idem, cap. 36. quæst. super Exo-
dum. In decimis itaque Domino offerendis, denarius numerus
perfectionem significat, quia usque ad ipsum numerus crescit;
itaque sicut in primitijs, principia voluntatum, ita in decimis
consummationem nostrorum operum ad Deum referre præ-
cipitur. Eadem ipsa Isidorus cap. 36. Comment. in Exodum
habet.* The imitation of the Law is commended; The Pro-
phetic of Malachie produced; And the 7. of the Epistle to
the Hebrewes applied: By Tithes perfection is signified,
and in type it is commanded that we offer in Tithes the per-
fection of our workes. *Therefore.* Anno, 720.

24. Synodus Angliæ, anno 786 sub Legatis ab Adriano primo (ex Centuriatoribus tom. 8. cap. 9. citatur pag. 199.)
can. Anno, 786.

can. 17. Sicut in Lege scriptum est, *Decimam partem ex omnibus frugibus tuis seu primitiis deferas in domum Domini Dei tui: Rursum per Prophetam, Adferre (inquit) omnem decimam in horreum meum, ut sit cibus in domo mea, & probate me super hoc si non aperuero vobis cataractas cœli, — Sicut ait Sapiens, Nemo iustam Eleemosynam, de his quæ possidet facere valet, nisi prius separauerit Domino, quod à primordio ipse sibi reddere delegauit. Ac per hoc plerumque contingit, ut qui decimam non tribuit, ad decimam reuertitur; Unde etiam cum obtestatione præcipimus, ut omnes studeant de omnibus quæ possident, decimas dare: quia speciale Domini Dei est, & de nouem partibus sibi uiuat, & Eleemosynas tribuat; Et magis eas in abscondito facere suasimus, quia scriptum est, Cum facis Eleemosynam, noli tuba cœnere ante te. It is commanded by the Law: By God in the Prophet Malachie: God from the beginning hath appointed them to be giuen him. Therefore.*

Anno, 791.

25 Synodus Foroiulienſis, anno 791. citatur pag. 64. *De decimis vero & primitiis — nihil melius puto dicere, quam quod scriptum est in Malachia Propheta, dicente Domino, Inferte omnem decimam — Quis non timeat vel contremiscat illam maledictionem quam minatur nolentibus offerre? It is inferred from the Prophet Malachie; the curse threatned is applied to Christians. Therefore.*

Anno, 800.

26 Capitulare Caroli Magni &c. lib. 6. cap. 29. *Decimas tuas ac primitias non tardabis offerre Domino, de filiis tuis primogenitis: De bobus quoque ac ouibus similiter facies. — & cap. 189. Annuntient Presbyteri plebi publicè, ut primitias omnium frugum terræ ad benedicendum afferant, & sic postea inde manducent; Et decimas ex omnibus fructibus, & pecoribus terræ, annis singulis ad Ecclesias reddant, & de nouem partibus quæ remanserint, Eleemosynas faciant. The precept of the Law is vrged, and thereupon payment enioyned. Therefore.*

Anno, 812.

27. Aponius in Cant. in verba, *Et odor vestimentorum tuorum. Vestimenta Ecclesie eos opinor intelligi, qui in Dei omnipotentis honorem, decimas de iustis laboribus suis Ministris Ecclesie præbent; sicut in Leuitico Dominus fieri iubet. Ex summariis*

riolis Luca Abbatis. They that pay Tithes as God commanded in Leuiticus, are the garments of the Church in the Canticles. *Therefore.*

28 Concilium Arelatense quartum, *sub Carolo Mag-* Anno, 813.
no, can. 9. Ut unusquisque de proprijs laboribus Decimas
& Primitias Deo offerat, sicut scriptum est. Decimas &
primitias tuas non tardabis offerre Domino Deo tuo. As it is
written, Let each man offer his Tithes of his labours. *There-*
fore.

29 Concilium Moguntinum 1. *eodem anno, cap. 38.* Anno, 813.
Admonemus & precipimus, ut decimas Deo omnino dari non neg-
ligatur, quas Deus ipse sibi dari constituit. God hath ap-
pointed Tithes to be giuen him. *Therefore.*

30 Paschasius Ratbertus, *in Matth. Lib. 10. Dixerat* Anno, 820.
enim supra, quod nec vnus apex iotæ præteribit à Lege, idcirco
nec nunc decimationem minimarum rerum relaxat, sed
ut omnia integrè compleantur; mandauerat enim iudicium
verum, & iustitiam seruare, misericordiam facere, & habere
fidem, propter gloriam nominis sui: Decimas autem offerre
licet, & ipsæ ad honorem Dei datæ pertineant, tamen propter
utilitatem Sacerdotum dabantur, ut vsibus eorum deseruirent.
Christ doth not remit the Tithing of the least things, because
no iote of the Law must passe: To offer Tithes belongeth
vnto the honour of God.

31 Agobardus, *Lib. de dispensatione &c. Rei Ecclesiastica* Anno, 828.
contra sacrilegos. pag. 266. Notum est cunctis Scripturam legen-
tibus, ab initio humani generis Sacerdotes fuisse, — sed & de-
cimas — sacerdotibus redditas. Et pag. 277. Sic nempe à Pa-
tribus intelligitur, quod dictum est; Reddite Cæsari, quæ sunt
Cæsaris, id est, tributa & vectigalia; quæ autem sunt Dei, Deo,
id est, decimas, primitias, ceteraq; donaria, tam vota, quam spon-
tanea, — postea, Commendat autem Deus hæc facienda, ubi
ait, Væ vobis Scribæ & Pharisei hypocritæ, qui decimatis &c. cum
illico subiungit, Hæc oportuit facere, & illa non omittere. Opor-
tet igitur, & semper oportebit quod Deus oportuisse testatur, ne-
que parui pendendum fuit, aut erit vnquam quod Deus vel fieri
iussit

iussit, vel factum facientis deuotione commendauit. Totus Liber dignus qui exscribatur.

Idem, in *Libro contra insulsam vulgi opinionem de grandine & tonitruis* pag. 155. *Multi sunt qui sponte sacerdotibus decimam nunquam donant; Viduis & Orphanis, caterisque indigentibus Eleemosynas non tribuunt; quæ illis frequenter prædicantur, crebro leguntur, subinde ad hæc exhortantur, & non acquiescant &c.* They were paid from the beginning of the world, Tithes are reckoned among things that must be giuen to God, because they are his: God commanded them to bee giuen; These things ye ought to haue done &c. That therefore alwaies shall be necessary to be done, what God saith ought to haue beene done; Neither must that bee neglected, which God either commandeth to bee done, or commendeth the deuotion of the doer: They are often preached, read, exhorted to be paid. *Therefore.*

Anno, 837.

32 Concilium Aquense, cap. 18. *Quod Melchisedech sacerdos Dei altissimi, typum gesserit Christi, catholica sentit Ecclesia, quod ei Abraham decimas ex omnibus dedit, ipsius Abraham ingentia commendantur præconia, Quem imitantur, qui sacerdotibus Christi ob illius amorem & honorem decimas dant, & ab illius merito sequestrantur, qui Deo oblatas decimas auferunt.* Abraham is commended for giuing Tithes: They imitate him who giue them for the honour and loue of God: and are separate from his merite who take them away. *Therefore.*

Anno, 849.

33. Druthmarus, in *Matth. cap. 55.* *Hoc oportuit facere, id est, iudicium & misericordiam & fidem & ea quæ ad hoc pertinent, & illa non omittere decimas accipere; Videant magistri Ecclesiarum, qui habent simile ministerium in populis, & tenent prædia Ecclesiarum, ne similes illis fiant, si tacuerint populis vitia sua.* The possessions of the Church are such as Christ commandeth not to omit to be paid. *Therefore.*

Anno, 849.

34. Walafridus Strabo, de *Rebus Ecclesiasticis*, cap. 27. *Decimas Deo & sacerdotibus dandas Abraham factis, Iacob promissis insinuat, deinde Lex statuit, & omnes doctores sancti*

Eti commemorant. Et profectò dignum erat, ut Israelita decimas frugum & pecorum & omnium pecuniarum Domino darent. — Cum itaque Iudaicus populus præceptum decimarum, tanta diligentia observaret, ut de minimis quibuscunque olusculis — decimas darent; Cur non maiori studio plebs euangelica eandem impleat iussione; cui & maior est numerus sacerdotum, & sincerior cultus sacramentorum? Ideo ergo danda sunt decimæ, ut hac deuotione Deus placatus largius præstet quæ necessaria sunt — Ac ut sacerdotes & ministri Ecclesiæ, cura & sollicitudine necessitatum corporalium, quibus sine hac vita transigi non potest releuati, liberiores fiant ad meditationem diuinæ Legis, & doctrinæ administrationem, atque spiritualis seruitij voluntariam expletionem &c. The fact of Abraham, the promise of Iacob, the Law, besides all the holy Fathers are urged: Christians ought to fulfill that commandement more then the Iewes; because now more number of Priests, better seruice, that they may better discharge their duties. Therefore.

35 Rabanus in Num. lib. 2. cap. 23. Et in veteri & in nouo Testamento, ministris Altaris & seruitoribus Templi, Domini mandatum est, de oblationum largitate, & decimarum, nutrimentum habere. It is the Lords commandement, both in the old and new Testament, that the Priests should haue sustenance by Tithes. Therefore. Anno 849.

36 Anastasius Abbas Græcus, in lib. contra Iudeos. Apud Canisium tom. 3. Antiquar. Læctionum pag. 180. Ad hunc locum deuenit Paulus ut ostenderet Sacerdotij nostri excellentiam, supra vetus, Quæ quidem maior excellentia. in ipsis typis rerum designata fuit, siquidem Abraham — progenitor Leui locum Laici tenuit in Melchisedech, quandoquidem decimas ei dedit, ut dare solent Laici Sacerdotibus: Et à Melchisedech benedictionem accepit, ut solent etiam Laici à Sacerdotibus. The Priesthood of the Gospel, more excellent then that of the Law, prooued by paying of Tithes out of the Epistle to the Hebrewes. Therefore. Anno 860.

37 Hincmarus Rhenensis dialog. de statu Ecclesiæ pag. 653. Anno 860.
C Quid

Quid de vobis dicam, seculares, qui non solum Ecclesias, sed etiam ipsa altaria possidere vultis? nunquid vos qui oblationes pauperum comeditis & bibitis, ad offerendas Deo hostias, pro ipso populo acceditis? Vos horrea frumento, & cellaria ex his quæ Ecclesiæ sunt, vino complebitis, & sacerdotes eius fame affligetis? cur non peritescitis iudicium Dei? Panes propositionum non licet comedere, nisi mundis & purificatis sacerdotibus? & vos cum vxoribus & ancillis vestris, & quod peius est, nonnulli cum scortis decimas & oblationes fidelium manducabitis? Coram vobis ardebit candela, quæ Deo est oblata, & eius altare & sacrificium sine lumine erit? — & postea. pag. 660. Lay-men in hauing Tithes breake the Law of God, must therefore feare the iudgements of God. Therefore.

Anno 890.

38 Rhemigius Antissiodorensis, in *Malach. 3. Quod de illorum decimis diximus, de Ecclesiæ populis possumus dicere, quibus præcipitur, ut non solum decimas dent, sed ut etiam sua omnia pauperibus, & Ecclesiæ ministris largiantur, &c. ad sensum Hieronimi. Christians are commanded to pay Tithes and more. Therefore.*

Anno 890.

39 Concilium Metense, sub Arnulpho cap. 2. Dominus loquitur per Prophetam, dicens, *Adferre omnem decimam — Ideo statuimus, ut nemo seniorum de Ecclesiâ sua accipiat de decimis aliquam portionem, sed solummodo sacerdos, qui eo loci seruit ubi antiquitus decimæ fuerunt consecratæ.* The Lords commandement by the Prophet Malachie, made the ground of a Canon for Tithes. Therefore.

Anno 895.

40 Concilium Triburiense, sub eodem. Ibi citatur Augustinus ubi supra, & epistola Gelasii cap. 27. S^c. Augustine sermon. 219. de tempore, is wholly to prooue it. Therefore.

Anno 948.

41 Concilium Ingilhemense, cap. 9. Apud Canisium *Antiquarum Læctionum. tom. 5. pag. 1060. Ut decimæ quas Dominus præcepit in horreum suum deferri, si Ecclesiis Dei non fuerunt redditæ, sed nefariâ cupiditate quæ senior Aetnæ ignibus ardet, à secularibus fuerunt retentæ, secularia super hoc non exercentur iudicia, nec in forensibus discutiantur causis &c.* The Lord commandeth them to be brought into his barne: To detain

detaine them is an vngodly desire. *Therefore.*

42 Statuta Synodorum, Ms. being written 900. yeeres *Anno 900.*
after Christ, *citatur pag. 210.* wherein for the right of Tithes,
the Mosaicall commandement, and a passage in S. *Augustine*
is brought. *Therefore.*

43 Leges Athelstani, made about the yeere 930. by the *Anno 930.*
advice and consent of the Bishops of the Land, commanding
a generall paiment of all prædiall Tithes, as they are cited
pag. 213. Ego Athelstanus Rex, Consilio Wulfhelmes Archie-
piscopi mei, & aliorum Episcoporum meorum; Mando Præpositis
meis omnibus, in toto regno meo, & præcipio (in nomine Domini &
Sanctorum omnium, & super amicitiam meam) ut in primis de
meo proprio reddant Deo decimas; tam in viuentis capitali, quam
mortuis frugibus terræ; Et Episcopi mei similiter faciant de suo
proprio, & Aldermanni mei, & Præpositi mei.— And after is
added the example of Iaakob, with some Texts of holy Scripture,
and places of S. *Augustine*, to shew vpon what authoritie they
grounded their Law, euen vpon the Law of God.

44 Constitutiones sub Odone Archiepiscopo Cantuari- *Anno 940.*
ensi, anno 940. The tenth and last Chapter whereof, are
onely for Tithes. *Decimo Capitulo mandamus, & fideliter obse-*
cramus, de decimis dandis, sicut in lege scriptum est, Decimam
partem ex omnibus frugibus tuis, seu primitijs deferas in domum
Domini Dei tui. Rursum, per Prophetam, Adferte, inquit,
omnem decimam.---- *Vnde & cum obtestatione præcipimus, ut*
omnes studeant de omnibus quæ possident dare decimas, quia spe-
ciale Domini Dei est, & de nouem partibus sibi uiuant, & elee-
mosynas tribuant. Citantur pag. 217. The Law is vrged for it,
And the Prophet *Malachie*: It is the peculiar inheritance of
the Lord God. *Therefore.*

45 Pœnitentiale ex Burchardo, *citatum pag. 124.* Hast *Anno 1000.*
thou at any time neglected to pay thy Tenths to God, which
God himselfe hath ordeined to be giuen him. *Therefore.*

46 Concilium sub Æthelredo, ann. 1010. *citatum pag. 221.* *Anno 1010.*
Wherin some Canons are for the iust paiment of Tithes, *Ec-*
clesiæ antiquitus constituta, to the ancient Mother or Parish

Church : and Tithes are there reckoned among *things due to God. Therefore.*

Anno 1020.

47 Elias Cretensis in *quintam orationem Greg. Nazianz. Abrahamus decimas Melchisedecho dedit, videlicet omnium manubiarum, quas secum ferebat, his scilicet Melchisedecho secretis vicem ei rependit, eoque facto mortales omnes docet, ut sese gratos erga Sacerdotes exhibeant, ijsque decimas omnium dent, qua Deus ipse suppeditavit.* Abrahams example teacheth all thankfulness toward the Priest, in giuing the Tithes of all. *Therefore.*

Anno 1050.

48 Leges Edwardi Confessoris, citata pag. 224. *De omni annona decima garba Deo debita est, & ideo reddenda: Et si quis gregem equarum habuerit, pullum reddat decimum. Qui vnam vel duas habuerit, de singulis pullis, singulos denarios: similiter qui vaccas plures habuerit, decimum vitulum. Qui vnam vel duas, de vitulis singulis obolos singulos. Et qui caseum fecerit, det Deo decimum; si vero non fecerit, lac decima die: similiter agrum decimum, vellus decimum, caseum decimum, butirum decimum, porcellum decimum. De apibus similiter, decima comodi. Quin & de bosco, de prato & aquis, & molendinis, parvis, viuarijs, piscarijs, virgultis, & hortis, & negotiationibus, & omnibus rebus quas dederit Dominus; Decima pars ei reddenda est, qui nouem partes simul cum decima largitur, --- Hæc enim prædicauit B. Augustinus, & concessæ sunt à Rege, Baronibus & populo.* It is due to God, and therefore to be payed.

Anno 1050.

49 Humbertus Cardinalis contra Græcorum calumnias; *Denique, si vetera non proficiendo, sed deficiendo transierunt, unde vobis Templum, Altare, — unde Primitiæ ac Decimæ? postremo unde vobis dilectio Dei & proximi, ac reliqua mandata Decalogi.* Tithes and First fruits continue from the Law. *Therefore.*

Anno 1060.

50 Petrus Damianus Lib. 1. Epist. 10. *Inter omnia porrò hic mala, illud excedit, & diabolicam propemodo videtur equare nequitiam, quia prædijs in militiam profligatis, omnique possessione terrarum, insuper etiam & decimæ & plebes adduntur in beneficium secularibus.* Idem lib. 4. epist. 12. *Sunt etiam qui plebes secularibus*

cularibus tradunt, id nimirum tanto gravius delinquant quanto & sacrilegium committere conuincantur, quia & sancta profanant. — Quid est enim decimas in usum secularium vertere, nisi mortiferam his viris, quo pereant exhibere? Idem, lib. 5. ep. 9. Nunquid coniugati, qui filios nutriunt, qui Deo decimas ex ipsius autoritate persoluant? The infeodation of Tithes is devilish, is sacrilege, is to profane holy things: They are paid by the authority of God. Therefore.

51 Concilium apud Windesoram, ex Ms. Excestrensi, Anno 1070. held some yeeres after the Normane conquest; whereof one Canon is, *Vt Laici Decimas reddant, sicut scriptum est.* It is written, is produced. Therefore.

52 Urbanus 2. in Charta Monachis Cluniacensibus in Biblioth. Clun. pag. 1448. Quia vero Decimæ tam veteri quam noua Lege Ministris Ecclesiarum noscuntur esse concessæ. Tithes granted to the Clergie, both by the old and new Testament. Therefore.

53 Iuo Carnotensis, Epist. 12. Multa inordinata video in domo Dei, quæ me torquent; maximè quod apud nos, qui altari non seruiunt, de altario viuunt, à quo sacrilegio cum eos absterere velim — Idem Epist. 192. Licet enim decimæ & oblationes principaliter Clericali debeantur militiæ, potest tamen Ecclesia omne quod habet, cum omnibus pauperibus habere commune. Idem in Panormia, tit. de Decimis, citat Concilium Rothomagense, cap. 3. Omnes Decimæ terræ, siue de frugibus, siue de pomis arborum; Domini sunt, & illi sanctificantur, boues, & oues, & capræ, quæ sub virga pastoris transeunt; Quicquid decimum venerit, sanctificabitur Domino. (Concilium istud citatur in Synodo prouinciali apud Westmonasterium, 1174. Et ante ab Anselmo Lucensi in Collectaneis.) It is sacrilege for those that liue not at the Altar, to enioy them: All Tithes are the Lords, and are sanctified to him in the words of the Law. Therefore.

54 Zacharias Chrysopolitanus in libro vocato, Vnum ex quatuor. lib. 3. cap. 126. Cesaris sunt nummi, tributa, pecunia, Dei vero sunt decimæ, primitiæ, oblationes. Idem cap. 141. Sci-

mus quidem Decimas offerri Deo propter Sacerdotes, qui spiritualia debent ministrare populo: sed adhuc hodie Sacerdotes, si populus Decimas non offerant, murmurant; si peccantem populum videant, non murmurant. Tithes are Gods, as *Matth. 22.* To him they are offered for his Priests. *Therefore.*

Anno 1129.

55 Synodus sub Willihelmo Archiepiscopo, an. 1129. Decimas sicut Dei summi Dominicas, ex integro reddi precipimus. These are the Demesnes of the most hie God. *Therefore.*

Anno 1130.

56 Hugo de sancto Victore, *Erudit. Theol. de Sacramentis, libr. 1. parte 12. capite 4.* Probabile tamen est, omnino hominem ad hac exercenda à principio à Deo instructum & eruditum fuisse. Vnde enim homo rerum suarum decimam potius quam nonam, vel octauam, vel aliam quamque partem offerendam esse scire potuisset, nisi à Deo doctus fuisset? From the beginning were men taught by God to pay Tithes. *Therefore.*

Idem de Sacramentis, libr. 2. parte 9. cap. 10. Eiusmodi ergo sunt quæ sancta dicuntur, vel Sanctus sanctificata, quæcunque Ecclesia possidet in substantia terrena, siue in pecunia, siue in terra, maxime in Decimis, quæ ab initio ita institutæ sunt, ut nunquam à ministerio diuino siue illorum qui deseruiunt, & ministerio diuino deputati sunt, usu, siue peccato ab alienari potuissent. Hæ quidem in principio, ob formam Sacramenti, magis instituta videntur, postea autem sub Lege scripta, & sub Lege Gratiae ad sustentationem Ministrorum Dei, sunt reseruata; Ita ut in ijs & deuotio offerentium mereretur, & accipientium necessitas consolaretur. Hæ igitur nullo modo ab usu Ecclesie ab alienari possunt, neque in possessionem laicam, siue commutatione, siue donatione transire. Et postea; Decimas quoquo modo usurpare, & retinere sine sacrilegij culpa non possunt, nisi soli ad quorum sustentationem diuina institutione ordinatæ sunt. Et postea; Ex quibus si quid forte ad sustentationem eorum qui in Ecclesiasticis officijs non deseruiant, sed tamen in secreta diuino seruitio mancipati sunt, accommodantur, indulgentia est, non debitum; ita tamen ut hoc ipsum de portione sit pauperum, non de sustentatione Clericorum. *Idem part. 10. cap. 5.* Decimæ quæ ab initio

icio institutæ sunt ad eorum tantum sustentationem, qui Tabernaculo deseruiunt. Tithes were from the beginning instituted, vnder the Law of Grace reserued, ordered by Gods institution for the Clergie, and them alone. Therefore.

Idem in Annot. elucidator. in Genesios cap. 4. Credimus Deum docuisse Adam cultum diuinum, quo recuperaret eius benedictionem quam amiserat per peccatum transgressionis, & ipse docuit filios suos dare scilicet Decimas & primitias. God taught Adam, and hce his children, to pay Tithes. Concerning first fruites, see Athanasius in Serm. Omnia mihi tradita sunt à Patre.

57 Hugo Pontiniacensis, & Bernardus Claraualensis in Epist. ad Abbatem & Conuentum Maioris Monasterij post Iuonis epistolas. pag. 545. Clericorum est Altari deseruire, & de Altario viuere, — Vos cum illis partemini beneficium, cum quibus non exhibetis officium; Paulus clamat pro Clericis, immo ante ipsū Moyses; Non alligabis os boni trituranti. — Quisquis plantat vineam — Per totam circa vsurpationem Monachorum in Decimis. Tithes denied to Monkes by authority of Scripture, 1. Cor. 9. Deut. 25. 1. Tim. 5. It is the whole intent of that Epistle.. Anno, 1130.

58 Petrus Comestor, Histor. Scholast. in Genesin. cap. 26. Speaking of the Offerings of Cain and Abel, saith: Creditur Adam in spiritu docuisse filios, vt offerrent decimas Deo & primitias. The payment of Tithes taught by Adam vnder the Law of Nature. Therefore. Anno, 1145.

59 Gratianus in Decretis passim. caus. 16. q. 1. & q. 7. & q. 4. c. placuit & alibi. Out of whom many testimonies might be excerpt, to make vp number; but thither I referre the ingenuous reader. Therefore: Anno, 1145.

60 Synodus Prouincialis apud Westmonast. anno. 1174. There out of a Synode at Roſne, (quoted before by Iuo in his Panormia) is this Canon cited and confirmed, Omnes decima terre, siue de frugibus, siue de fructibus, Domini sunt & illi sanctificantur, sed quia multimodo inueniuntur decimas dare nolentes, statuimus. --- The Law in the last of Leuiticus. Anno, 1174.

cus is the ground of the Canon in that councell. *Therefore :*
Anno, 1177. 61 Ioannes Sarisburiensis, *de Nugis curialium. lib. 7. c. 21. citat. pag. 127. Miror ut fidelium pace loquar, quodnam sit, quod decimas et iura aliena usurpare non erubescunt : Inquient forte religiosi sumus; plane decimas soluere religionis pars est & postea. Exemptiones derogant constitutioni diuinæ. To pay Tithes is a part of religion. Exemptions from payment derogate from the Law of God. Therefore.*

Anno, 1178. 62 Alexander. 3. in *Epist. ad Rhemensem Episcopum. Extr. de Decimis cap. 14. & 15. Decimæ non ab hominibus, sed ab ipso Deo institutæ sunt. Idem ad Cantuariensem in Concil. Lateran. parte. 4. cap. 2. Institutioni diuinæ manifestius obuiant, qui decimas Ecclesiis non persoluunt. Idem epist. 19. (Edit. post Petrum Cellensem) Archiep. Vpsellensi, &c. Præterea illud adiiciendum mandamus, quatenus populum regimini & gubernationi vestræ commissum, decimas Ecclesiis fideliter & deuote persolvere, Sicut ab ipso Domino noscitur institutum diligenter ac sollicitè moneatis — Iuxta illud Malachiæ Prophetæ. Ibi citat Concilia, Moguntinense & Rathomagense, quæ antea adducta sunt. Tithes instituted not by man, but by God: They that pay not, resist the ordinance of God. It is instituted by the Lord : The Prophet Malachie is produced. Therefore.*

Anno, 1178. 63 Fredericus Barbarossa. *apud Goldast. Constitut. Imper. tom. 2. p. 50. citat. p. 474 Scimus à Deo decimas & oblationes Sacerdotibus & Levitis primitias deputatas.---* We know Tithes and Oblations appointed to the Priests by God himselfe. The same words are referred to the Emperour Henry the 6. the sonne of Frederick, by Arnoldus Lubecensis in *Supplem. chron. Sclauorum lib. 3. c. 18.*

Anno, 1178. 64 Richardus Cantuariensis, *sive Petrus Blesensis epist. 82. Contra privilegium Cisterciensium, Epistola notabilis. Et quæ est hæc iniuriosa immunitas, ut exempti sitis à decimarum solutione, quibus obnoxia terræ erant, antequam vestræ essent, & quæ solutæ sunt hætenus, non personarum obtentu, sed territory ratione? Si in vestram possessionem terræ deuolutæ sunt, quare in hoc*
hoc

hoc periclitatur alienum ius? nam ad vos terra iuxta communem equitatem, cum suo onere transierunt. Ut quid in alienam iniuriam terras & nutrimenta vestra privilegiari facitis, ut auferatis quod alienum est? Nunquid Abel de nutrimentis suis Dominum non respexit? nunquid iustiores estis primo omnium iusto ut vos contra dei iustitiam erigatis? per Prophetam præcepit Dominus, Decimas inferri in horreum suum, vos ab eius horreo iubetis auferri; Habet iustitia diuinæ legis, ut in Leuitarum sortem cedant decimæ; unde & iustitiæ diuinæ manifestè resistit, qui ministris Ecclesiæ nititur ius decimationis auferre. Sane & ex his & consimilibus satis liquet, quod si virtus obedientia esset, in solutione decimarum, aut reddituum, aut exhibitione iuris alieni, facile detrectaretis obedientiæ iugum. Milites Galliarum sibi ius decimationis usurpant, nec vestris privilegiis deferentes eas a vobis potenter extorquent. Aduersus eos debetis insurgere, non aduersus Clericos, aut Ecclesias clericorum. Deberetis recolere vos quandoque fuisse Clericos, atq; Sacramenta salutis, in earum Ecclesiis percepisse. Sed Christiana professionis vinculum, & deuotio filialis, affectus pruinignales induit, & sub religionis pretextu, transyt in contemptum. Non ponimus os nostrum in cælum, nec de facto summi Pontificis disputamus. Sed si Dominus Papa indulgentiâ speciali quandoque privilegiavit vos, dum ordo vester in paupertate gaudebat, dum in usus egentium sua lenitatis viscera liberaliter effundebat, potuit tolerari ad tempus, licet in communem redundauit iniuriam, quod causa necessitatis fuerat introductum. Nunc autem quando vestra possessiones multiplicatae sunt, etiam in immensum, privilegia hæc potius ambitionis quam religionis instrumenta censentur. Quicquid indulgeant privilegia Romana Ecclesiæ, vobis expedire non credo, contra conscientiam vestram quod alienum est usurpare. Quod si à sede illa publicum emanasset edictum, quod ubicunque inueniretis Clericos, aut alterius habitus Monachos equitantes, vobis liceret eos è suis enactionibus deicere, & equos in usus proprios retinere. Quid interest equos rapiatis an decimas? Nisi quia decima res spiritualis est, & ideo enormius sacrilegium in decimis committitur quam in equis. Cum Dominus præcipiat decimas

solui, quis contra eius præceptum potuit dispensare? *Vbi diuina & humana iussio sibi inuicem contradicunt, obediendum est Deo, magis quam hominibus. Cum sint due leges exterior & interior, interior semper præiudicat, quodque puritas conscientia dicat mihi, exteriori præcepto fortius est, & omnem indulgentiam alienæ dispensationis euacuat. Si filij Israel de mandato Domini & in retributionem longi obsequij, quod Aegyptijs impenderant, eis vasa argentea & aurea obtulerunt; non expedit vos hac ad consequentiam trahere, nisi constet Dominum hac mandasse; & vos nobis tanquam Aegyptijs longæ seruitutis obsequium impendisse. Consultius ergo & modestius agentes, date operam, ut prædictæ ambitionis nota, quæ vestre sanctitatis titulos dehonestat, abscindatur à vobis, nec pro rebus perituris, commune in vos scandalum excitetur. Vae illis per quos scandalum venit. In restitutione rei alienæ, non credatis conditionem vestram in aliquo ledi: Nam si quid utilitatibus vestris deperit hac in parte, deuotio populorum, quanunc erga vos plurimum turbata est, totum hoc plenior munificentia restaurabit. Quod si pertinaces vos & inflexibiles exhibitis, vinculo anathematis innodabimus vniuersos, qui aliquid vobis dederint, aut vendiderint, unde ius decimationis obueniat, & in cælum clamabimus, & ad thronum summi iudicis appellabimus, ne quis huius vinculum excommunicationis absoluat: Principum etiam fauorem in hac plenissimè obtinebimus, ut gladio spirituali, manus civilis assistat; Et quicquid contra principale oraculum venditum aut donatum vobis fuerit, confiscatur. Antequam ergo res in deteriorem vergat exitum, vestre famæ metutius providentes, velitis assuescere solutioni decimarum, illarum maxime quas cum maiori omnium rancore & odio usurpatis, & quas Clerici, sine Monachi hætenus perceperunt. Nam si de noualibus tantum, sicut beate recordationis Hadrianus Papa constituit, decimas retinetis, nobis in ea re damnum erit tolerabilius, cuius emolumenta non sensimus. Verum iuxta Philosophi sententiam, Non sine dolore amittitur, quod delectabiliter & commode possidetur. This I haue cited at large, as being a most notable and perswasive Epistle, wherein to prooue directly, the diuine right of Tithes, he saith: The refusers set themselves*

selues against the iustice of God; so they that endeavour to take them away. The Prophet Malachie is produced. It is the iustice of Gods Law, that Tithes should bee the Priests: To be priuiledged is ambitious, not religious: It is against conscience to retaine them. It is worke then theft: Since God hath commanded Tithes to be paid, who can dispense? It is Gods commandement wee must obey God therein. Therefore.

Vide Epist. 103. eiusdem Petri Blesensis, Where the Abbot of Reading beeing scrupulous in conscience, about retaining Tithes, brings against himselfe the words of the Psalmist; *Sumite psalmum & date tympanum*: Which words are applied by many for the right of the Clergie.

65 *Helmoldus Historiæ Sclauorum cap. 3. Ea conditio à Anno 1180.*
Rege (id est Carolo) propositâ, & ab ipsis (id est Saxonibus) sus-
cepta est, ut abiectis demonum cultu, Christianæ fidei sacramenta
susciperent, essentq; tributarij & subiugales Domini Dei, Om-
nium iumentorum suorum & fructuum cultura, seu nutritura sue
partem sacerdotibus legaliter offerentes. (Idem in ipso Caro-
li Priuilegio Krantz. Metrop lib. 1. cap. 4.) Et cap. 92. Viri
Holsati — deuoti quidem in Ecclesiarum constructione, & hospi-
talitatis gratiâ, sed decimis iuxta diuinum præceptum legali-
ter persoluendis, rebelles existebant. Cætera multa quæ citan-
tur pag. 472. To offer Tithes is to be tributarie and sub-
iects to God. They pay Tithes according to the diuine pre-
cept legally. Therefore.

66 *Cœlestinus 3. tit. de Decimis cap. 23. Ex transmissio. Anno 1191.*
Fidelis homo de omnibus quæ licitè potest acquirere, decimas te-
netur erogare. Euery faithfull man is bound to pay them,
Therefore because a worke of faith, commanded.

67 *Synodus Eboracensis sub Huberto, anno 1194. Ci- Anno 1194.*
tatur pag. 229. Cum Decimæ sunt tributa egentium animarum,
& ex præcepto Domini dari debeant, non est reddentis eas di-
minuere: Statuimus itaque, ut de his quæ renouantur per an-
num, cum omni integritate, decimæ debitæ & consuetæ conferan-
tur; ita ut in primis decimæ, absque vlla diminutione Ecclesiæ,
D 2 dentur

dentur, post modum de nouem partibus mercedes messorum & aliorum seruientium pro arbitrio soluentis tribuantur. Tithes ought to be giuen, as the Lord commanded. Therefore.

Anno 1200.

68 Synodus Westmonasterij sub eodem, anno 1200. Citatur pag. 230. *Cum Deo & Sacerdotibus Dei, Decimas dandas, Abraham factis, Iacob promissis innuerat, & auctoritas veteris & noui Testamenti; nec non & statuta sanctorum Patrum declarent — Ibi etiam citat Concilium Rothomagensis Abrahams fact, and Iaakobs promise insinuate, and the auctoritie of the olde and new Testament, and the statutes of the holy Fathers declare them to bee payed. Out of the Councel of Rosne the Law in Leuiticus cited. Therefore.*

Anno 1200.

69 Stephanus Tornacensis, Epist. 171. *Tangit nos hac plaga communis pater, qua tantum non inuitat, sed etiam inuitum trahit, ut & soluatis Decimas, & exigatis. Successores Melchisedech filios Aaron non excusant, nec Leuitarum immunitas portione sibi concessa gaudere permittitur, cum uniuersos fiscus absorbeat. Idem epist. 74. Credo pater, quia Cistercienses sunt de numero eorum, qui violenter diripiunt cælum; sed vtrum violenter illis terram rapere licet, nondum legi. In receiuing Tithes, Priestes are the succellours of Melchisedech. Therefore.*

Anno 1200.

70 Ioannes de Belet in diuinorum officiorum explicati-
one, cap. 5. *In veteri Lege præceptum est, ut ex omnibus bonis darent decimas, quod ex omnibus Deus sibi decimam voluit, quam tribui Levi in celebratione sui officij appropriauit: Sic nos vtique humiliter facere debemus. Quod si vero à Laicis iniuste possideantur, nihilo tamen minus, eas tenemur soluere. Nec sane licitum est eis conuinere, aut de his dispensare, sed illas tantisper reddere, donec Deus iniustam eorum possessionem in melius emendauerit. Proinde si quis decimas retinere præsumpserit, certe ille transgressor & præuaricator præcepti diuini iam factus est, & mortaliter peccat. Atque etiam qui hoc non fecerit, sciat se non solum decimam retinere, sed quod & nouem alias partes iniuste non dubitat possidere, tantum est non reddere, quod ad Deum pertinet. Wee must pay Tithes as in the Law is*

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commanded, God will haue Tithes of all: There is no indulgence, no dispensation in them: Hee that payeth not, is a transgressour of the Law of God; sinneth mortally: hee vniustly possesseth the rest of his estate. Tithes belong to God.

71 Innocentius 3. *In serm. 3. de dedicatione Templi, citatur pag. 78. Grauitur ergo peccant, qui decimas & primitias non reddunt Sacerdotibus, sed eas pro voluntate sua distribuunt indigentibus. Idem Extr. de Decimis, c. tua, Quæ diuinâ institutione debentur. Et cap. tua nobis. Quas Deus in signum vniuersalis sui dominij, sibi reddi præcepit, sua esse decimas & primitias asserens. — post, Sacerdotibus ex mandato diuino debentur.* They sinne grieuouly, that pay not Tithes to the Priests. Tithes are due by diuine institution. God hath appointed them to bee payed, in signe of his vniuersall dominion. Therefore.

72 Fredericus 2. *Constitut. Sicularum, libr. 1. tit. 6. Attendentes quod solutio decimarum, quarum debitum ex vtriusque Testamenti tabulis confirmatur, tanto in Ecclesiis Dei preciosior redditur, quanto decimalis oblatio de bonis hominum, velut electum quoddam spirituale peculium à Domino reputatur.* The duetie of payment of Tithes is confirmed out of the Tables of both Testaments. The offering of Tithes is accounted by the Lord as a choice spirituall peculiar profit.

And thus out of my few bookes and small reading, haue I collected a *Septuaginta duo*; not interpreters, but witnesses of the diuine right of Tithes: Whereof many are full of particulars, as *Councels*, and *Statutes*, and all before the yeere *MCCXV*. To whom, if I should adde the whole number of *Canonistes*, (vntill *Nauarre* and *Couarruias*) and the old *Schoolemen*, who required either this proportion, or a greater portion euen *de Iure diuino*: And many other late learned *Diuines*, both *Protestants* and *Papists*, by others produced, besides the *Councels*, *Determinations*, *Ordinances of State*, *Bills of Parliament*, both *Forreine* and *Domesticke* by himselfe related, I might *paginam, non causam implere*, write

Epist. 190.

much, not more. For, *aut hic testium satis est, aut nihil satis*, as Varius said either this is witnesse enough or nothing is enough. Now, since these haue applied the Scripture, expounded the sence, propounded their sentences, added their reasons for the *Ius diuinum* of Tithes, what remains but obedience? vnlesse we will be of *Abelardus* proud humor in *St. Bernard*, *Omnes sic, Ego autem non sic*, All are of one mind, but I am of another. Now neither the Schoole trick of *exemplariter, non obligatiue*: Nor the Iesuite-tricke of *Ius diuinum* for *Ecclesiasticum*, I hope can preuaile with considerate Readers, who shall find in these, Tithes to be *praecepta, instituta, mandata ordinata, iussa*, for the honour of God, manifestation of our thankfulness, sustentation of the Clergie, expectation of a temporall or eternall blessing, auoiding of the like curse, credit of the Euangelicall Priesthood in comparison of the Iewish, signe of Christianitie, acknowledgement of subiection to God, expressing reuerence to the Scriptures: And more, that *d' bentur, obstringimur, constricti sumus, requiruntur ex debito, transgressor mortaliter peccat*. And this Tithing to be *a principio, a primordio, naturale*, taught by Adam, and many such other Phrases.

Vincent. Lyrin.
cap. 35.Petrus Blesens.
Epist. 82.

Let therefore couetousnesse yeeld to conscience, customes giue place to canons, the priuate spirit submit to continue tradition, these dayes hearken to the former ages, and mans will be obedient to Gods word so interpreted by the ancient. And seeing they are encompassed with such a cloud of witnesses, (to which each mans reading can adde many) *Dedicant bene, quod didicerunt non bene*; Let them vlearne their former ill lesson: For *quicquid indulgeant priuilegia Romanae Ecclesiae* (I may say *iuris Anglicani*) *illis expedire non credo contra conscientiam, quod alienum est usurpare*. Whatsoeuer priuilege either Romish superstition or Customary Law may asfoord, yet I am certainly perswaded, that they ought not to usurpe, what is not their owne, and those are Tithes: From payment whereof, hee that exempteth any thing increased by Gods blessing, being demanded by the Church, ouer that, *denieth Gods*

Gods iurisdiction in giuing no Tribute for it, against the first commandement, hindereth Gods seruice in taking maintenance from it, against the fourth, is plainly sacrilegious in vsurping what is not his owne, against the eighth; besides the dishonouring of spirituall Fathers, against the fift; and so in one sinne, directly breaketh foure commandements; Let St. Cyrill of Alexandria vpon that knowne passage of the third of Malachie, make the vse of all; *Discimus hinc etiam nos, magni criminis loco ducendum, non offerre Deo, quibus gratitudinem nostram ostendimus: & agrum quem ille victui ferendo sufficientem donauerit, ad gloriam Dei non referre.* Hence we Christians also learne, that it is to be accounted a great crime not to shew our thankesfulnesse to God by Oblations, and not to affoordent of that field, some part to the glory of God, which hee hath made sufficient for our maintenance. And for to answere the doctrine of Mr. Selden touching an originall of Tithes, not of duty but by Arbitrarie consecrations; obserue, how almost in euery seuerall Countrey, some of these Authours haue maintained the diuine right before that Mr. Selden either hath or can shew such his consecrations, and many of them also the practise, informing the duty, not bounty of such payment. And thus much in lieu of *Animaduersiones* vpon the two first Chapters both of his *History* and *Reuiem*.

Yet in the second Chapter I suppose *Epiphanius* and Saint *Chrysostome* are but rashly censured by the Authour: that *Epiphanius* lib. 1. hæres. 16. should not there sufficiently vnderstand what the *Iewes* did in their Tithing; whereas himselfe confesseth, that *Fathers meaning not easily to bee apprehended*: But why should *Epiphanius* so well conuersant in the *Iewish Ceremonies*, as to write a booke *de veste Sacerdotali* as *S. Ierome* testifieth in *Epitaphio ad Fabiolam*, and another *De mensuris & ponderibus*, which is extant; Nay who did write against the Heresies of their customes; be thought not to vnderstand them? This is to lay too great weakenesse vpon so learned a Father. That worthy *Casanbon* cited by the Author in this place is so farre from fastening such imputation, that he doth

Tho. Aquin. in
Opusc. de 10.
præcept. c. 18.

Page 19.

Aduersus Ba-
ron. pag. 63.
& 64.

most

most learnedly explicate his meaning in the place quoted,

As also for St. *Chrysostome*, of whose words, since by his owne acknowledgement, *some probable coniecture might bee brought*, as I conceiue, the censure of not *sufficient understanding* should not so easily haue passed; vnlesse hee that would abstaine from probable coniecturing, had rather be a *Criticke* vpon the *Ancient*.

ANIMADVERSIONS on the third Chapter.



IN this Chapter, as also in the third of his *Reniew*, the Collections of the Author concerning the *Heathen practise*, both *Latine* and *Greeke*, are various and pertinent, and some of them not vsuall. But the maine places; That, of *Festus* for the *Latine*, *Decima quaque veteres dijs suis offerebant*, And that, of *Harpocration* for the *Greeke*, τὰ ἐν τῇ πολέμῳ ληθέντα ἱδικάζουσιν τοῖς θεοῖς, *They used to Tythe the spoyle of warres to the Gods*; and that, of *Didymus* an olde *Grammarian*, Ἔθος ὡς ἐλλώσιπον τὰς δεκάτας τῶν πλεονομήων τοῖς θεοῖς καθεύουσι: *It was a Greeke custome to consecrate the Tythe of their abundance to the Gods*: (From whence both hee and *Suidas* fetch the reason why δεκάτευσαι, to Tythe, signifieth also to Consecrate:) These, haue vndergone too sharpe a censure.

P. 28. & 29.

In the first, for the place of *Festus*; The Author acknowledging the learning of him, his Epitomator *Paulus Diaconus* is charged with *ignorance*, bolde contracting this piece of *untrueth*, and by the Testimonie of *Diuine Scaliger* forsooth, (another infringer of the Diuine right of Tythes) is accounted *barbarous*, and by him amended, to put in *Herculi* for *Dijs*: But this also seemes not enough, nay false to our Historian: and the Criticks not agreeing, were it not best to trust *Paulus Diaconus* his honestie in relating learned *Festus* Sense

Sense, who saw what they coniectured at? Great Scaliger, the Diuine Scaliger (such flattering *Hyperboles* proceed from ambitious loue) is no doubt by the more great and more diuine himselfe, censured: And though Hee be *diuine*, yet hee may erre, or write insufficiently.

To the ingenuous Reader, the credit of neither (because parties) ought to preiudice the vnpartiall authority of that ancient Abbreuiator (about 800. yeeres agoe) whose credit and learning was not then thought so *barbarous* and *false*, he being a *Secretis* to *Desiderius* King of the *Lombards*, and after with *Char'lemain*, who employed him in reforming the Homiliaries of the Church, (as appeareth by his Epistle before *Alcuins* Homilies) where it is said *Inconsonantes amendare Solacismos -- idque opus Paulo Diacono familiari clientulo nostro eliminandum iniunximus*; To amend the vncoherent Barbarismes in those Homilies, and polish the same, wee haue imposed on our familiar seruant *Paulus Diaconus*.

What if in some other things hee might be mistaken, wherein hee might be ignorant? must this Relation which is so plaine, be so also? Why not as well *Festus*, who relates it from *Verrius Flaccus*? and *Verrius Flaccus*, who from some other, and so an errour by Tradition be deriued? May not originall Authours be deceiued, as well as Abbreuiators be dishonest? Surely rather, since *Festus* Workes being then extant, might haue shamed *Paulus Diaconus*, if faultie; whereas *Verrius Flaccus* Relation though false, could not be so soone condemned; since hee speakes of *Veteres*, the ancient times, which could not be recalled to testifie against him.

I had alwayes that opinion of Abbreuiators, that although by them both the *Style of the Authour*, and sometimes the *circumstance of the Storie* were lost, whereby posteritie was defrauded both of their elegant Language, and the obseruable manner of Atchieuements: yet that they were so carefull, not to faine, but fashion a senie, *grande ferculum in vase breui*. If I should turne Criticke, I should rather lay all imputations vpon a transcribing either *Monke* or *Merceenarie*,

pag. 457.

who either might mistake or misuse; or some *false Printer*, whose haste or negligence can abuse the most carefull Author, then impeach the credit of an Ancient, especially in laying fallhood in relation to his charge: For as for Ignorance, and that he was *Ineptissimus*, (though by Mr. *Seldens* confession he were *a man of great reading and knowledge for the Time he lived in*, and many Testimonies might be collected) albeit in other passages it might appeare; yet how in this, the sentence might be so inuolued, as to enforce an ordinary vnderstanding to mistake; I yet conceiue not. If the words were but transcribed, then no fault; if some or many particulars were related, then the indefinite wordes, *Veteres Dys* (as those of *Varro* in *Macrobius. Maiores solitos Herculi decimam vouere*; and *Mos erat Herculi decimam prophanare*, as *Cassius*) were true consequence; and are euen confirmed by many passages in these *Third Chapters* of his booke and *Reniew*: And as for the worde *Quaque*, since by his owne collections, some of all their substance, some of money vpon sale, some of spoiles of warre, some of *Sea Merchandize*, some of gaine, some of all that should encrease vnto them, offered the Tithes to some one *Deity* or other; may not that word and all the sentence, bee as true as his Chapter, which *relates as much*? But out of his Collections as out of that; the Naturall Law of Tithing may as much haue prooffe, since each man knowes euen the Law of Nature, amongst the Heathen to haue beene depraued, and the practise thereafter to haue not onely beene disused, but contradicted. And yet cannot I conceiue, how this proportion in offerings should by any, especially so many, and those so good, be embraced; vnlesse the *Naturall Law* representing it selfe to them either absolutely, or in example of *Abraham* and the faithfull, was approoued.

pag. 459.

For our *Historie writer*, to expect any to proue such manner; either to bee *continuall or compulserie* is needlesse; The varietie of their *Gods* could not expect such a quantitie for each, and for a Common-wealth to haue compelled Tithes rather

rather for one *God*, then another, had shewed partiall obedience, and that to their *Deities*; from the neglect of any of whom they might expect iust reuenge in destruction. *Quis enim laesos impunè putaret, Esse Deos?* Wherefore, from his disquisition of this ancient Tithing amongst the *Roman Gentiles*, I cannot but conclude, that either reason, the arte of the Law of Nature; or example of the faithfull, the practicers of that law, or precept; the ground of both (not to admit chance in a seruice of Religion) were the true originals of such vs amongst them. Whereby the purposed prooffe of the right of Tithes by the Law Naturall may truly be inferred, and *Paulus Diaconus* admit any construction to please the Critickes.

But for conclusion, I see no reason, why this Sentence should not be truly the mind, if not syllables, of *Festus*; Since *Paulus Diaconus* in his Epistle to *Charles* before his Epitome, professing how he had quite tooke away some things as superfluous, in the rest laith, *Quedam abstrusa penitus stylo proprio enucleans, nonnulla ita ut erant posita relinquens*, he mended the style of some abstruse sentences, leauing many as they were before; So that all in *Paulus Diaconus* is either *Festus* his words, or sense; and so these Critick coniectures should not preuaile against such honest profession of so holy a man.

For the *Grecian* practise, amongst whom some Tithes were vowed or otherwise arbitrarily, or by some locall custome paid to speciall *Deities*, And *Cypselus* of *Corinth* when he vowed all the goods of the Citizens, if he could get the Citie, had speciall regard to the tenth part as competent to a *Deitie*: And *Cræsus* would not haue the goods of the *Lydians* ransackt, because they were necessarily to bee tithed to *Iupiter*: and *Pisistratus* exacted Tithes for such an ende. I wonder therefore what should ingenerate such conceipt in *Cypselus* of the competencie of that proportion for a *Deitie*; or necessitate in *Cyrus* or *Cræsus* the tithing of the *Lydians*; or cause the same to bee exacted by *Pisistratus*; vnlesse some tradition of Nature had beene receiued into the vsuall practise of the highest vnder-

standings? Why should diuers Countries, to so severall *Deities*, concur in the same quantitie, if the *naturall* vniuersall *Law* of Tithing, did not regulate their practise? And so it seemes amongst the *Grecians* it did: for *Harpocraton* and *Didymus* and *Suidas* all agree: in auowing the common practise, and the two latter, thence inferre the worde *ἀγνισμός*, which signifieth to Tithe, to import also to Consecrate.

This inference of theirs our Authour would crosse by assuming that signification from a particular ceremonie of *Maides* in *Athens*, initiated to *Diana* at the Feast *Brauronia*, whom he calleth *Ten yeerelings*; because if they were not initiated and consecrated after five, and before ten yeeres of age, they might neuer haue husbands; from the last yeere whereof, saith he, they were called *ἀγνιστές*, and so *ἀγνισμός* did signifie to consecrate not generally, but to that purpose onely. This particular ceremonie of consecrated maides (who might before that age of tenne yeeres bee initiated) cannot seeme so probable and forcible to withstand the authoritie, and generall reasons of *Harpocraton* and *Didymus* from so generall customes amongst the *Grecians* in generall, to most particular *Deities*. For whereas to *Diana* alone were these *Ten-yeereling Maides* (if not before) initiated, yet to *Apollo*, *Iupiter Olympius*, *Neptunus Isthmichus*, *Iuno*, *Pallas*, *Priapus*, and the Gods in generall, by our Authour produced, were other Tithes consecrated, and that by diuers countreys, and by particular great men. From the generall Customethen, and no such particular, in all reason must the inference proceed, since in these last, was truly Tithing by separation from naturall vse, but in that no Tithe separated, no not the *ἀγνιστές*, but euen initiated to naturall course: *Suidas* therefore and *Didymus* illation, haue greater probabilitie, especially in regard of the generall sentences from common practise.

But hauing perused the Authours themselues, *Harpocraton*, and *Hesychius* and *Suidas*, what I coniectured, I found true; namely, that the proper reason of the like signification

tion of *Δικατεύειν* and *καθιεῖναι* was from the generall, and not such particular custome, which in a Metaphoricall and priuate sence of *Lysias* onely is but there intimated. The relation of the words of *Harpocration*, (whō *Suidas* followeth almost *ad verbum*) will make it euident. *In verbo* *Δικατεύειν*. *Δίδυμος* ὁ Γραμματικὸς περὶ τοῦ βιβλίου γράφας, φησὶν, ὅτι τὸ δικατεῦσαι Λυσίας ἐν τῷ περὶ τῆς Φρυγίχης θυγατρὸς, ἀρκτεῦσαι ἔρρηκεν. Δικατεῦσαι μὲν, τοι φησὶν ἐλέγχο Κυρίου το καθιεῖν, ἐπειδήπερ ἔθος ἂν Ἑλληνικὸν τὰς δακτύλας τῶν περιγινόμενων τοῖς θεοῖς καθιεῖν: ἵσως δὲ τὸ ἀρκτεῦσαι δικατεῦσαι ἔρρηκεν ὁ ῥητωρ ἐπειδὴν δακτύλιδες ἤρκτευον. *Didymus the Grammarian writing a little booke concerning this word* *δικατεύειν*, *saith that Lysias in his Oration De Phrynichi filia, saith* *δικατεῦσαι* *for* *ἀρκτεῦσαι* *to consecrate to Diana. But hee saith that* *δικατεῦσαι* *is said properly to consecrate, because it was a Grecian custome to consecrate to the Gods the Tythes of all their increase (not onely abundance, as the Authour doeth interpret)* *In like sort the Orator Lysias said* *δικατεῦσαι* *ἀρκτεῦσαι*, *because the Maides of Tenneyeres old, were consecrate. The proper signification therefore of the word is censured by the Author, and the priuate onely embraced; which his other Authour also* *Hesychius* *doth declare, who in the word* *δικατεύειν*, according to his custome hauing proposed the most proper significations as *τελώνειν*, *δικάτην ἐισπράττεσθαι*, *To pay Tribute, to offer Tythes*, he addeth *ἐλεγον δὲ καὶ τὸ ἀρκτεῖναι δικατεύειν*, *But some also haue called, To consecrate to Diana to Tythe. Not therefore* *Suidas* *and* *Dydimus* *are deceined but himselve, euen by the Testimonie of his owne Authors: And herein he hath plainly shewed his desire to weaken the naturall both right and practise of Tything.*

But foreseeing it may bee such discouery of his Criticall falshood, now the sayings of those two *deceined* must bee interpreted, and their speach of generall Custome must bee contracted to the particular vse of some, so that the sence is, *Many men did so.* If Paulus Diaconus might haue had so favorable Interpretation, hee had scaped many hard wordes (and his wordes would haue borne it.) But to admit his Interpretation, still I must require some reason, Why so many

should so doe, vnlesse nature had instructed their religious Idolatrie?

Num. 5.

Concerning the *Carthaginian and Arabian practise*; I haue only this passage to obserue, the Confession of the Historian, of their deriuing this vse from the *Jewes*: The Arabians from the *Jewes as Neighbours*, and the Carthaginians from the *Phœniceans their Ancestours*, who spake the same language with the *Jewes*, and conuerst most with them: And besides; this coniecture for the generall, that it is not unlikely that the ancient and most knowne example of *Abraham* gaue the first ground both to them, and the Europeans, so sometimes to dispose their Tenth of the spoiles of warres to holy vses. And from him sure or some former law, their other Tything had originall.

Juuent. Satyr.
14.

But why Abrahams example should leade them, vnlesse Abrahams Reason, the law of Nature (illightned by religion in him) had also possessed them, I know not. He therefore concludeth this Chapter with that of the Satyricke, *Nunquam aliud Natura, aliud Sapientia dictat. Nature and wisdomes alwayes teach the same*; And so leauing his quotations to be examined by those who haue such leasure and Bookes, contenting my selfe onely with what *his owne Relation* hath afforded, and thereout my selfe collected, I passe vnto his next Chapter, in which and those that succeede, I shall endeavour more exactly to trace him, though by way of Animaduerſion; yet so, as no materiall passage shall bee omitted, but either haue the due Commendation or Censure.

A N I-

ANIMADVERSIONS on the fourth Chapter.



He Methode of the Historie is to shew : P. 35.
first the practise , secondly the positive Num. 1.
Lawes, thirdly, the opinion of the right of
Tythes , according to the distinction of
Ages ; Euery Chapter containing the
distance of 400. yeeres ; And in this
Chapter the first 400. yeres from Christ
are treated of : Wherein by way of Pre-

face, for the practise, this is his assertion. *Till towards the
end of the first foure hundred yeeres no payment of them can
bee prooued to haue beene in vse. As a Tenth not at all in vse.* P. 34.
In the Reuiew: *It cannot bee prooued that any were paide.* P. 406.

Not to inferre the practise from the Constitutions or Homi- Animad. 1.
liarie perswasions of the powerfull primitiue Fathers, (which
yet with great probabilitie I might, presupposing the obedi-
ence of those first Christians to their godly Pallours :) nor
to confesse the inconuenience of those dayes of persecution
for so certaine a maintenance: But to insist vpon Testimo-
nie; Origen (whose opinion is plaine in the 18. of Numb. for
the right) saith for the practise, *Sed & in Nouo Testamento si-* Hom. 16. in
militer venerabilis est Decas — verum quia unus author est om- Genes.
nium, & fons & initium unus est Christus: Idcirco & populus
decimas quidem Ministris & Sacerdotibus prestat ; But also in
the New Testament the Tenth is venerable. — But because
there is one Authour of all, one fountaine, one beginning, e-
uen one Christ ; therefore euen the people payeth Tythes to the
Ministers and Priests. Next, (to omit S. Cyprian, whose places
are after misinterpreted) S. Augustine, who was borne anno
350. saith, *Maiores nostri decimas dabant : Our Ancestours*
paide Tithes. Then, the imperfect worke vpon S. Matthew, Hom. 48. Inter
either quinquaginta Hom.

Rom. 44.

Lib. 3. vnum ex
quatuor. c. 141.Cap. 16. qu. 1.
In Canonibus.

Collat. 21. c. 30.

P. 36.

Animad. 2.

either *Chrysostomes* or *Coataneous* with him, (before *S. Augustine*) *Quod si populus decimas non attulerit, murmurant omnes*; If the people bring not Tythes, euery Priest murmurth. (These words are cited out of him by *Zacharias Chrysopolitanus*, circ. ann. 1101.) Besides the Councell of *Gangra*, concerning First fruits (which haue the same reason, say sense also, as *Gratian* saith) which against *Eustathius*, who would haue challenged them from the Church, made a Canon, and in the Preface sayth, *Primitias quas Institutio veterum Ecclesis tribuit*, First fruits which the Institution or practise of the Ancient hath giuen to the Church. Before the latter end therefore of these first foure hundred yeeres Tithes prooued to be payed. Nay, that presently vpon the leauing of the *Apostolicall* communitie of liuing, *Id tunc vniuersis Sacerdotibus placuit*, It was decreed by all the Priests then, that Secular men, *velut legalium decimarum necessitate compellerentur*, should be inforced of necessitie to pay, as it were, legall Tythes: If therefore compulsion, then sure payment. Thus saith *Cassian*.

Entring the part of Practise, He proposeth the vniuersall communitie of liuing amongst them *about Ierusalem*. And the whole Church both Lay and Clergie, liued in common. But this kinde of hauing all things in common scarce at all continued for we see not long after in the Church of *Antiochia* euery one of the Disciples had a speciall abilitie, *Act. 11. 29*. So in *Galatia* and in *Corinth*, where *S. Paul* ordained weekly offerings.

This Argument is *Abusum*, since this liuing in common was not then embraced by any company of Christians, but at *Ierusalem* onely, for whose necessitie (hauing no encreasing profite from their land, because solde) against the time of dearth prophesied by *Agabus*, both this contribution, *Act. 11*. and the weekly collections, *Rom. 15. 1. Cor. 16. 2. Cor. 10*. were requested. In other places each man had a seuerall abilitie from the beginning: as for prooffe euert see his owne *Occam in loco citat. in opere 90. dierum, cap. 10*. where out of *S. Augustine lib. 3. de Doctrina Christiana, cap. 6*.
hee

hee prooueth, *Quod præter Hierosolymitanam Ecclesiam, hoc non ullas Ecclesias gentium fecisse scriptum est*; That besides the Church of Hierusalem, no Church is related to haue done so. Yet after also amongst other Christians that cõmunie of liuing was embraced vntill long after, as *Tertullian.*

Apologet. cap. 39.

The monethly offerings giuen by deuout and able Christians, the Bishops or officers appointed in the Church, receiued. *Vide Synod. Gangrens. Can. 66. (it should be Can. 7.)*

It should be the Bishops and their Officers, *Ab eo Constitutum*; which I rather obserue, because he calleth them in the next page, *Elders appointed, as Oeconomi or Wardens*: as if *puritane Elders or Churchwardens*, then disposed the estate of the Church, whereas none, but at the appointment of the Bishop might intermeddle: and he that did, was called *Diaconus Sanctæ Administrationis*, or *Præsident Diaconie.*

Animad. 3.

Cyprian. lib. 2. Epist. 8. Cassianus Col. lat. 21. cap. 1.

The monethly offerings called *Stipes*, as *Tertullian Apolog. cap. 39. & vide sis cap. 42.*

Pag. 37.

That these *Stipes* were in lieu of Tithes or proportionall in respect of the Clergie, himselfe interpreting the place in *St. Cyprian* acknowledgeth, and *Lucifer Calaritanus* may seeme to inferre by applying the *Væ vobis Scribæ & Pharisei qui decimatis*, Woe to you Scribes and Pharisees that tithe &c. to *Constantius*, saith in comparison, *Homo qui cum Stipem non modo rogatus, sed & tribuens sis, nonnunquam sponte, tamen vt sape dictum est, proscribas Christianos*, Thou art the man who although vnasked, euen willingly giuest a *Stipes*, yet thou banishest Christians, &c. And they were in such quantitie that the couetous might growe rich by.

Animad. 4.

Pag. 39. Lib. 2. pro Anastasio pag. 132.

Some authoritie is, that about this time lands began also to bee giuen to the Church: If they were so.

Cyprian. lib. 1. epist. 7.

To remooue this doubting of lands then giuen; to his other authorities, the 2. Epistle of Pope Pius the first (cited also by *Hinemar*us,) may be added, where he saith, *prædia Diuinis vsibus tradita*, possessions giuen to holy vses. And his owne interpretation after of *St. Cyprians* place *de unitate Ec-*

Animad. 5.

Dialog. de statu Ecclesie. pag. 657.

Euseb. Hist. lib.
7 cap. 29.
Epist. 80. Asterio & Alypio.

Epist. 32. lib. 5.

Conciliorum
Tom. 1. Editio
Veneta. pag.
472.
Can. 24. & 25.
Animad. 6.

clesia, for Tenthes of patrimonies giuen to the Church. *Paulus Samosatenus Ecclesie domo abstinere noluit*, would not leaue the Churches house. And before the ende of the first 400. yeeres, *Gregorie Nazianzen* telleth, *per multos extitisse qui totas etiam domos Ecclesie addici passi sunt; non defuisse etiam qui suapte sponte facultates omnes suas obtulerint*; That there haue beene very many, who haue conueyed whole houses to Churches; that there haue not wanted some who voluntarily haue offered all their substance &c. And St. *Ambrose* hee talkes of *Agri Ecclesie soluunt tributum*, The lands of the Church pay tribute. To omit that *Constantine the Great*, *pradia tribuere posse constituit*, Gaue authoritie to conuey lands, as in the *Treatise de Munificentia Constantini*: And the phrase *fructus Agrorum*, in *Concil. Antiocheno*, The fruits of lands.

Those monethly payes, they called *Mensurnas diuisiones*. *Cyprian. Ep. 27. & 34. & vide 36. Editione Pameliana.*

Onely in one of those places is that phrase in the 34. *Epistle*; those other quotations therefore are vnnecessarie.

Cyprian speaking familiarly — calleth the Brethren that cast in their monethly offerings *fratres sportulantes lib. 1. Epist. 9. or, 66. Edit. Pamel.* vnderstanding the offerings vnder the words *Sportulæ*.

Animad. 7.

Here the *Author* is deceiued, for *fratres sportulantes*, are those, *qui recipiebant*, saith *Pamelius*, They who receiued; not they who cast in: which besides that it is plaine, to make a sense in St. *Cyprian* (whose place after shall bee examined.) Yet if he had but considered the very next words before his phrase, *mensurnas diuisiones* in the 34. *Epistle*, *Edit. Pamel. or lib. 4. Epist. 5. veteris Edit.* he could not haue so erred. For there, St. *Cyprian* writing to his Church of *Carthage* to entertaine *Aurelius* and *Celerinus* Confessors, whom he had already made *Lectores*, he addeth, *Ceterum presbyterij honorem designasse nos illis iam sciatis, ut & Sportulæ iisdem cum presbyteris honorentur*. But vnderstand that I haue an intention to make them priests, that they may be honoured with the same *Sportula*, that is stipends as priests; Is not heere an euident inter-

pre-

pretation of the phrase *in honore Sportulantium fratrum*, to be no other, then such, *qui in Ecclesia Domini ad ordinationem Clericalem promouentur*, who in the Church of God are promoted to the order of Priests, as in the words before in the Epistle? For whereas, those that were not in orders were content onely *alimentis Ecclesie & sumptibus parciorebus*, with foode & some small allowance, as the same Father: Yet those in orders had besides, honourable stipends, which were called *Sportula*; So that heere *Sportula* can not signifie offerings, and so in both, the sense was mistaken. Lib. 1. ep. 10.

Sportula, to denote the oblations given to make a *Treasurie* P. 38.
for the Salaries, and maintenance of the Ministers of the Church, for this primitive time: And to this purpose was it also used in later times. Conc. Chalcedon. in libello Samuelis, & aliorum contra Iban. Et *Videsis* Tom. 3. Concil. fol. 231, c. 31. Editionis Binnij, penultima.

That *Sportula* did not signifie any such oblations, is shewed Animad. 8.
before: and the quotations of the later times are much wronged, and in them the Clergie, whose maintenance must arise out of Bribes, or bee so, if his sence might stand. For in both places *Sportula* signifieth nothing but Bribes; the words of the first are: *Tertiodecimo, quia à Paganis incidentibus in peccatum sacrificiorum, accipiens Daniel Episcopus Sportulam, relinquit crimen, negocians & hinc sibimet lucrum.* 13 Because Daniel the Bishop receiuing of his countrey dwellers, that fall into the sinne of sacrificing to Idoles, *Sportulam*, that is, a bribe, leaueth the fault vnpunished, euen thence raising gaine to himselfe. The words of the second, being in *Concilio in Palatio Vernis sub Pipino, Can. 25. Vt nullus Episcopus, nec Abbas, nec Laicus, propter iustitiam faciendam, Sportulas contradictas accipiat, quia ubi dona intercurrunt, iustitia euacuatur*: That no Bishop, Abbot, or Layman, receiue Bribes, which are forbidden; for where gifts are, there is no iustice. I am sorry the Author should allot such wicked maintenance for so holy a profession.

By Saint Cyprians authoritie *Epist. 66. Edit. Pam. (or lib. 1.*

Ep. 9.) It is manifest that no payment of Tithes was in his time in use, although some too rashly would hence inferre so much: those wordes, *tanquam decimas accipientes*, plainly exclude them.

Animad. 9.

These cannot exclude the paiment of Tithes then, if hee will consider *their living together*, either at the *Bishops Sees*, or at some *Monasteries* at the prouision of the *Bishop* by his *Officers* as himselfe confesseth the vse, p. 81. & 255. Of which *Officers* they did not onely receiue *alimenta*, but also *Sportulas*, as before. For then, vnlesse hee can prooue no paiment of Tithes to the *Bishop*, who besides the *Sportula* of the Clergie, was also to contribute to the poore, his inference is nothing. And the phrase, *In honore Sportulantium fratrum tanquam decimas ex fructibus accipientes*, is such, by which he must needes inferre rather more then lesse; because hee acknowledgeth that the meanes of the Clergie being compared to the *Leuiticall*, was proportionable; and yet besides, the poore were relieued heere, as out of the *Leuites* they were not. But the *Tanquam*, was not for the proportion, which might bee equall, but for the kinde, they receiuing in *Sportulis*, in money and food, what the *Leuites* did in kinde; and therefore it is not said onely, *Tanquam Decimas*, but it is added, *ex fructibus*, to expresse the relation of the comparison. But for conclusion, that Tithes were paid there, besides the place next to bee obserued, the passage of Saint *Augustine* before, (*Maiores nostri Decimas dabant*, being in the *Province of Carthage*, may well haue respect to these times (Saint *Cyprians* Martyrdom being not an 100. yeeres before the birth of Saint *Augustine*.) But in his Reuiew about this place, he contendeth not much, neither more will I.

P. 39.

Out of the place of Cyprian, in his booke *De unitate Ecclesie*, § 23. in edit. Pamel. You may gather that no vsuall payment was of them; And in his Reuiew, not Tithes properly, but Tenth of Patrimonies are understood: The words are, *At nunc de Patrimonio nec Decimas damus*.

P. 460.

Animad. 10.

The Authour acknowledgeth, the oblations were lesse, then vsuall

usually before; and therefore that Saint Cyprian expresseth their neglect in these words, (no doubt of a Christian duction) of paying Tenth at least; though according to Apostolicall practise, they would not sell all, and lay it at the Bishops feet. Now that these Tenth were of *Annually increase*, not partes of patrimonies, besides the Legall word, *Decimas*, so properly signifying; and the preposition *De*, denoting emanation, not partition; the crossing of his doubting of the gift of lands before pointed at, might well haue procured the alteration of so new an interpretation, especially since by the true sense, St. Cyprians complaint may haue more latitude, because they were so farre from selling houses and lands to giue, as in the Apostles time, vnto the Church; that now, not so much as the Iewes did, they gaue not the Tythes out of their patrimonie: For otherwise to haue giuen the Tenth part of their patrimonie, might in the sentence of eloquent Saint Cyprian haue made no disproportion, since he doth not say, before *Domus tunc & fundos omnes, or vniuersos, venundabant*, which should haue shewed the difference from Tenth parts of patrimonies; and a great rich man might haue giuen *Domus & fundos*, and yet but the Tenth part of his patrimonie, and so haue made the Father complaine without cause; But lastly, if of the most St. Cyprian did not receiue Tenth, then hee might seeme to preach without power to perswade practise. For all the confident speech therefore of the Historian, that no *Annually increase, or such Tenth is heere to bee understood*, I hope the contrary is manifest.

Christian Emperours, Gratian, Valentinian, and Theodosius, Anno 380. made lawes for Tenth of Mines and Quarries for the Emperours, when no Tythes of such things was thought of then. Num. 2.
C. Tit. de Metallarijs l. 3. cunct.
etc.

But he forgets St. Ambrose, who claymed and had euen Tythes in those dayes as himselfe confelleth in the beginning of the next Chapter, who liued and conuersed with these Emperours, and by them was highly honoured; And as for that law, what neede it expresse any Ecclesiasticall Tythes, being

onely an imposition on the Miners, of paying a Tenth to the Emperours, and another to the Lord of the Soyle, in whose land by priuiledge they might digge for stones; not implying a denyall of a further dutie to God both personall and mixt.

Pag. 40.
Animad. 12.
lib. 27.
Hierom. Ad
pammachium
contra Errores
Ioan. Hierosolc
mynitani.

And that at that time part of those *Oblations* were Tythes, whence *Ammianus Marcellinus* saith, that the Bishop of Rome, *Damasus*, was enriched (nay enuied, for as *S^t. Hierome* speakes, *Pratextatus*, who composed the Schisme betweene *Damasus* and *Vrsicinus*, *Solebat Indens Beato Papa Damaso dicere, facite me Romanae urbis Episcopum, & ero protinus Christianus*; He was wont merily to say to Pope *Damasus*, *Make me Bishop of Rome, and foorthwith I will bee a Christian*;) Besides the Canon made by him as *Baronius* relateth concerning Tythes (whereof after) as also Saint *Hieromes* Epistle to him of Tythes; the many passages of Saint *Hierome* which sometimes was at Rome, might bee sufficient testimony.

Animad. 13.

And further that in Saint *Chrysostomes* time there were Tythes, amongst that for which the Clergie was enuied, may appeare by that before, *Ex opere imperfecto*, and other passages in the Catalogue.

Num. 3.

For Opinion, only Origen is produced, whose Greeke I neither haue nor could euer learne it to haue beene published: In his conclusion Origen leaues out Tythes. Thus the Author.

Animad. 14.

Thesetwo, seeme his arguments to slight this ful and grounded opinion of *Origen*; in reciting which, what hee hath omitted is in the Catalogue obserued. But for the first, since *S^t. Hierome* is the interpreter, and for the second, since *Origen* doth not onely say, but euen powerfully prooue the Diuine dutie of Tythes; those hidden exceptions may not blurre the trueth of the authoritie, to which what other Testimonies either before, or in that age I haue obserued, are placed in the Catalogue.

P. 42. num. 4.

In the *Constitutions* of the Church. The *Constitutions Apostolical* by *Clement* are iudged supposititious, both in general

nerall: First, for that they are branded for counterfeits in an Oecumenicall Councell. Syn. 6. in Trullo. Can. 2. And secondly, P. 463. for that in them the five and twentieth day of December is affirmed there to be the Feast of Christs Natiuitie, whereas the learned know not untill S^t. Chrysostomes time, that day was not settled, but variously obserued of the Easterne Church, which should haue had specially notice of the Apostolike Canons, And S^t. Chrysostome then learned that time of the Westerne and Latine Church, as Homilia de Natiuitate.

I intend no defence of the whole volume of the Constitutions Apostolicall by *Clement*, against which many others haue produced most valide obiections: yet these reasons in respect of the Canon of Tythes are too weake. The Councell at *Trullus* reiected them; because *Iam olim ab ijs qui à fide aliena sentiunt, adulterina quadam & à pietate aliena introducta sunt, quæ diuinorum nobis elegantem ac decoram speciem obscurarunt*; Now a long time agoe, Heretikes haue foisted in many false and impious things, which haue obscured the elegant and seemely shew of what in them is diuine, as in the Canon. So *Gelasius*. 1. also for the corruptions, iudgeth them Apocryphall. But can the Authour prooue these of Tythes to bee corruptions? what olde heresie brought in these? what impietie is in the claime? what improbabilitie is in the time, since the succeeding fathers challenge them? To whole benefit, considering the exceeding liberalitie of the former dayes before the Councell of *Trullo* or *Gelasius*, could the ordinance onely of a Tenth be? Although therefore other parts beto be accounted *Adulterate* and *Apocryphall*, yet if any be, this is surely *Apostolicall*. *Quod vniuersa tenet Ecclesia, nec concilijs institutum, sed semper retentum est, non nisi Apostolica autoritate traditum rectissime credimus*: What the whole Church hath alwayes retained, not originally ordained by Councels, wee belecue to be a Tradition by Apostolike authoritie. Animad. 15.

The second exception is vntrue, and answered by S. Chrysostome himselfe, who in the very Sermon quoted, *De Natiuitate*, Can. 2. August. de baptismo contra Donatistas, lib. 4. c. 23. Animad. 16.

tate, speaking against those (it seemes of the prouince of Hierusalem) *Qui putant quod in Epiphanijs nascitur*, That Christ was borne in the Epiphanie, saith for the confirmation of the Day now obserued: *Non sunt nostra quæ loquimur, maiorum sententia est, uniuersus mundus contra huius prouincie opinionem loquitur*, What we speake, is not our owne inuention, it is the opinion of the Ancient, the whole world speakes against the opinion of that Prouince. Here is vnitie, antiquitie, vniuersalitie. Hee proceedeth, *Vobis qui dixerunt? qui sunt in ista prouincia utique Apostoli Petrus & Paulus, & ceteri Apostoli? vos eiecistis, nos suscepimus; Petrus qui hic fuit cum Ioanne, qui hic fuit cum Iacobo, nos in Occidente docuit: & vestri igitur & nostri Apostoli Magistri sunt.* — *Alibi pax erat, hic (i. at Hierusalem) bellum, Magis itaque traditio ibi debuit seruari quam hic ubi discordia* — *Hoc totum dicimus quia nobis dicunt; Hic Apostoli fuerunt, hic Traditio fuit: predicationi nostre creatura consentit, mundus ipse testis voci nostre, usque ad hanc diem tenebræ crescunt.* — *Simulque considerate inter Dominum & Ioannem Baptistam sex menses sunt:* Who tolde you? What did Peter and Paul and the other Apostles that were in that Prouince? You excluded them, wee receiued them: Peter that was at Hierusalem, that was there with John, that was there with James, hath taught vs in the West: In other places was peace, there was warre at Hierusalem: better therefore might the Tradition be preserued there, then here where was discord. — This wholly wee say, because they obiekt, Here were the Apostles, here was the Tradition. To our words, the creatures consent, the world is witnesse to our sentence, for vnto this day be the dayes shortened. Also consider, how betweene the Natiuitie of our Lord, and S. John Baptist, were sixe moneths. Out of which, the falshood of his collection is euident, euen made and answered by S. Chrysoftome; *The Easterne Church should haue had specially notice of the Apostolicall Canons, so Hee: Hic Apostoli fuerunt, hic Traditio fuit, so they.* But for all this, S. Chrysoftome defends the Tradition from S. Peter, and shewes the probabilitie;

litie; not infringing the authoritie of *Peters Tradition* from this *Constitution*, as our Author doeth; but confirming this *Constitution* to be *S. Peters*, though the *Easterne Church* did not practise it; And prooueth it, by the distance of sixe moneths from the birth of *Iohn Baptist*, whom to haue beene borne according to the *Churches* account, he supposeth the *Easterne Church* allowed.

Neither is that Argument of any weight; The *Easterne Churches* did otherwise then is contained in these *constitutions*, therefore there were no such constitutions, or not known to them, since the controuersie about the *celebration of Easter* in *Polycrates* and *Victors* time shewed, that therein there were diuers practises from diuers Traditions; as euen in this Argument was pretended: and the Tradition of *S. Peter* seemeth not to be vnknown, but by these not to be approoued. I will not call this Argument *grosse*, and *ridiculous*, and *deceiuing*, with many other bad names, as Hee calls the same Argument, being but affirmatiuely proposed: And what difference in consequence of Reason betweene *præceptum est, ergo factum*; and *non factum est, ergo non præceptum*? and yet, this must serue *his* turne, though amongst them, who being vnder diuers gouernments, haue diuers Traditions; through the sides of *Clement* to weaken the authoritie of the receiued custome of the obseruation of *Christmas* day in the Churches of Christendome: And yet if wee from a *Canon* of the Church, and *Statute* of a kingdome, and those grounded vpon the *Law of God*, doe inferre *charitably*, that therefore, at *that time*, in *these gouernments*, such was the practise of that, which is now allowed in all these seuerall gouernments; yet such Arguments must be hyst at.

So much in generall; but in particular, first, the *constitution for Tythes*, is iudged fained and counterfeit: because, had it beene the *Apostles ordinance* or *use of the Church in the Primitive times*, *Origen*, *Tertullian* and *Cyprian* (hauing such occasion to mention them) could not haue beene so silent of it: In the next succeeding age, the Councels, who talke of the goods of the

Church, and offerings of the fruits, would haue mentioned them.

Animad. 17.

Origen and *Cyprian* claime them, and name them as in vse, as before and in the *Catalogue*: *Tertullian* hee excludes them not by his *Stipes*, which either in respect of the paucitie of the *Clergie* afforded a liberall maintenance, or were ouer and aboue Tithes, which because before were paid to *Idoles seruice*, were not thought as a charge to any new conuerted; for *Tertullian*, euen in the same chapter where hee names them *Stipes*, remembreth the excelsse of the feasts, *Herculana-rum decimarum*, of *Hercules Tithes*; and the custome of the *Carthaginians*, vnder which gouernement hee liued may per-swade it, whereof before in the 3. *Chapter*. And yet further, *Tertullian* in the 42. chapter of the same *Apologeticke* saith, *plus nostra misericordia insumit vicatim, quam vestra religio templatim*, our bountie bestowes more almes in each village, then your religion in your Churches: So that these *Stipes* were no such contemptible portion.

Operum p. 276. The succeeding *Councils* what need they name Tenthes, since as *Agobardus* saith, *Nulla compulit necessitas, feruente ubi-que religiosa deuotione, & amore illustrandi Ecclesiae ultro astu-ante*, that is, They needed make no *Canons* to claime them, for then they must haue claimed them as Tithes, but onely to dispose them, and so the name of goods, or offerings, or fruits, or *Redditus*, or such like were more proper: because not Tenthes as Tenthes were diuided by the *Bishop*, but an estate of them together with Rents and oblations were *Canonically* dispensed. They were Tenthes as from the *Laytie*, goods as in the *Clergie*, or to respect both, offerings. When the *Councils* challenge them, they are named as in the *Canon* of *Pope Damasus* afterward.

2. The constitutions of *Clement* for Tithes are thought forged, First, for their pride, for in his *Review* pag. 464. Hee saith *lib. 2. cap. 34. the supremacie of all power is arrogated in the same to the Clergie, it being there commanded, the priests to bee honoured as kings, and haue tribute payed them as kings, And that*

that they are so bold as to apply that in Samuel, touching what a king would doe in taking from his Subjects to the power of Bishops as if they should doe so, and they affirme it as much more reasonable, that Bishops should doe so, and constitute and ordaine the same wholly—for Bishops as for kings. 1.Sam.8.

An ingenious Reader, that shall consider the purpose of that constitution, by way of perswasion from the duty of the Fifth commandment in the sustentation of Parents, either naturall, as in the chapter before, or politicke, as in that; to require maintenance for the fathers and rulers of the soules, shall easily perceiue such imputations of arrogant claime to be vniustly laid vpon that constitution: and therein, that the Author hath discovered more will to oppose, then hee had reason, onely, (I may doubt) to make odious the cause of the Church or Clergie, for whom yet there is onely claimed *quæ sunt ei à Deo constituta ad alendum eum & Clericos eius*, what God hath appointed for the sustenance of him and his Clergie. Animad.18.

As also in the next exception, where he saith that the Authours reckoning vp the Ten Commandements, make the Tenth to be, Thou shalt not appeare emptie before the priests; whereas, there the Authours reckon other morall duties which are not immediatly precepts of the Commandements, though this as those in the sense required is a like morall, And if by chance it hapned to be the Tenth, it needed not such a flout. Animad.19.

Neither is that other constitution of St. Matthew lib.8.cap. 30. other then what is alwaies after commanded, that the Reuenues of the Church should by the Clergie be disposed, besides their owne necessities to relieue the poore: And in that diuision of *Primitiæ* to the Priests and Deacons, and *Decima* to the rest of the Clergie, it is but a Canon of order, that the best should haue the best, and those were the *Primitiæ*. But this also was Gods præcept in the Law, Numb. 18. whereupon Eucherius saith, *Primitiæ frugum ceterarumque rerum Sacerdotibus, Decimæ vero Leuitis deputabantur*, The First fruits of corne and other things were appointed to the Priests, but Tithes to the Leuite. Animad.20.
Pag.462.
In quæst. sup.
Leuit.

Lib. de Iudaicis
superstitioni-
bus, pag. 81.

P. 464.

P. 43.

Animad. 21.

In palma Chri-
stiana, lib. 4.
cap. 34.

Hom. 11. in
Num.

In prefat.

Epist. 80. Aste-
cio & Alypio.

But howsoever, what by the censure of *Gelasius*, and the Councell of *Trullo*, and the saying of *Agobardus*. *Licet ijdem libri iudicentur Apocryphi, pleraque tamen ex his testimonia inveniuntur à Doctores usurpata*, Although the same bookes are iudged *Apocryphall*, yet out of them many testimonies are found vsed by the *Doctours*: and by the concession of our Authour since they were written 1000. yeeres agoe: they are good authoritie for the *Antiquitie* of claime, if not of *constitution*, and therein may also countenance *The counterseit Canons of the Apostles*.

Against which, in the next place, he opposeth his censure thus. *The Can. 3. and 4. onely are indeed of First fruits, although touching them by that name, certainly no Law was made under the Apostles; but no words of Tenth.*

The *Canons* of the *Apostles* though for the whole number of 85. they haue small authoritie with the learned, both *Protestants* and *Papists*, to be *Apostolicall*; yet the first Fiftie haue had defenders both *Protestants* and *Papists*, though few are practised by either: But His exception is euen *petitio principij*, certainly no *Law* made under them for *First fruits*; to oppose this *Law* made. I leaue the defence of all the first fiftie *Canons* to *Frigiullaus Gautius*.

And for this particular, let the Authour consider whether this may not seeme *Apostolicall*, since *Ireneus* saith, *Offerre oportet Deo Primitias*, we must offer *First fruits* to God. And *Origen*, *Decet, & utile est etiam Sacerdotibus Euangelij offerre primitias*, It is decent and profitable to offer first fruits to the Priests of the Gospel. And the Councell of *Gangra Anno 324*. *Primitias quas veterum institutio Ecclesiis tribuit*, First fruites which the institution of the *Elders* haue giuen to the Church: besides the later authoritie of *Gregorie Nazianzene*, where he beginnes, *Quemadmodum area & torcularis Primitias, & filiorum eos qui vere filios amant Deo consecrare iustum ac pium est, quoniam ab ipso & nos ipsi & nostra omnia sunt*, As it is right and religious to consecrate to God, the first fruits both of the floore and winepresse, so of their children if they truely loue them

them, because from him both we our selues & ours are. And St. Chrysostome, and St. Hierome might be added. Besides the practise euen in the Greeke Church, (though after) as Theodoret doth relate of Theodosius the Monke, who there speaking of the labour of the old Religious, saith, *Est enim absurdum ut i quidem qui aluntur in vita seculari, se affligentes & laborantes alant filios & uxores, & propterea & tributū conferant, & ab ijs exigantur vectigalia, & Deo offerant primitias, & mendicorum pro viribus medeantur inopia; Nos autem non quaramus ex laboribus &c.* Hom. 35. in gen.
In 3. Malach.
Religios. Hist.
cap. 10.

For it is absurd that Lay men should afflict themselves, and labour to keepe wiues and children, and besides pay Tribute, and answer customes, and offer First fruits to God, and for their abilitie releue the poore, And wee Monkes doe not labour, &c. To which, many more authorities might bee added. Whether then, this Canon may not bee thought Apostolicall, since it was so immediately after the Apostles taught, and no other Canon before can be produced to command it, let the Reader iudge? And heere though our Authour deride it pag. 464. The version of Ioannes Quistinus in Zonaras his Comment on the Canon, rendreth it by Decimas as well as Primitias, and so also in the Interpretation of Zonaras; and so in defending the Canon for first fruits, we haue light on Tythes, which yet he saith are not mentioned.

The Canon also of a Councel about the yeere 380. vnder Pope Damasus, related by Baronius ad annum 382. to be in the Legend of this Pope, which was used to bee read in the Church, is confidently affirmed to bee suppositions, and pag. 134. a fained one, because taken out of a Legend, neuer receiued as Canonically in the Church; not the eldest Code of the Church of Rome remembereth them: whereas some Decrees of this Pope are dispersed in the Compilers, and c. 10. q. 1. c. Hanc consuetudinem, one especially — being made onely for the disposition of such things as were given to the Church, speakes onely of oblations. Neither before Binius his Edition had any volume of Councels receiued them. Pag. 43.

Although Baronius authoritie with me haue no great credit, yet with the Authour, mee thinkes it should; since euen Animad. 22.

Pag. 465.

Pag. 52.

against the testimonie of indeed very ancient Authours (as in the Reuiew he confesseth) that great and most learned Cardinal Baronius, (as he stileth him) must be preferred: yet his reasons are too weake against it.

Can. 12.

Can. 70.

Operum p. 387.

For the name of *Legend*, though (through the shamelesse and impudent relations of lying Monkes in the late *Legenda Aurea*) it be ill conceipted of; yet this in those purer times, and many others which were vsed to be read in the Church, must haue better construction, or else we must imagine that those *holy Fathers* would admit falsities to be publicly proclaimed for truths; who yet in the Councell of Laodicea, as they were very carefull that nothing were read but Scripture; so in the 3. at Carthage, onely added, *Liceat etiam legi passiones Martyrum, cum Anniversarij dies eorum celebrentur*: Let the passions of Martyrs be read on their Anniversaries: yet made a Canon in the *Mileuitan* and *African* Councils, *Vt preces & orationes, nisi probata fuerint in Concilio, non dicantur, &c. ne forte aliquid contra fidem, vel per ignorantiam, vel per studium sit compositum*: That no prayers or orisons bee, vnlesse they bee allowed by a Councell, lest through ignorance, or of purpose, any thing might bee composed against the Faith, as *Agobardus* citeth it; though in the Canons themselues are also *prafationes* and *commendationes*. How then shall wee mistrust this, because then a *Legend*, though after indeed they were *stuffed with lies*?

And since they were in a *Legend*, which was vsed to bee read in the Churches, sure they were receiued as *Canonicall*, that is, true; though not into the *Code* of *Canons* by the ancient *Compilers*, to whose knowledge, although the other Councell, and some Epistles and Decrees might come, yet this Councell being in a *Legend* (no likely place for Canons) and the reading thereof hauing beene disused, or not in those places, might well scape the most diligent enquire of the *Compilers*.

C. 10. q. 1. Hanc
consuetudinem.

And in that they cite one Canon of him, which beeing made onely for the disposition of such things that were giuen

uen to the Church, yet speakes onely of oblations, not naming Tithes, or first fruits; yet out of that Canon I conceiue the probability both of this Canon, and *Saint Hieromes Epistle* to him. That Canon is against a wicked custome of Lay men, which then increased against the *holy Catholike Church*, *Qui oblationes quæ intra sanctam Ecclesiam offeruntur, sub dominio detinebant*; who did reteine in possession the oblations offered in the Church, whom hee doeth Anathemaize. Now that in these *Oblations*, more then the voluntary offerings were meant; obserue how hee saith, *Si quis contra hanc regulam nostram, & contra sanctorum 318. Patrum, qui in Nicæno Concilio hoc constituerunt, temerarius præsumptor fuerit, & ulterius oblationes de sacris Ecclesijs auferre molitus est, &c.* If any, against this rule of ours, and of the 318. Nicene Fathers, who there ordeined it, shall be a rash præsumer, and hencefoorth offer to take oblations out of holy Churches, &c. But this can haue reference to no Councell, but that of *Gangra* (indeed composed of the *Nicene Fathers*) Can.7. *Si quis oblationes Ecclesiæ extra Ecclesiam accipere, vel dare voluerit, &c. Anathema*: where that *Primitie* (and *Decime* also, as c.16. q.1. *In Canonibus*) are vnderstood the diuers translations, but especially the *Præface* doeth manifest; where amongst the errours of *Eustathius*, against whom that Councell was, this was one, *Primitias quoque fructuum & oblationes eorum, quas veterum Institutio Ecclesijs tribuit, sibi met vindicasse, &c.* If therefore by the generall name of *oblations*, some more speciall maintenance may be vnderstood: why might not *Damasus* in some Councell make such a Canon, *ut Decime & primitie à fidelibus darentur, & qui detrectarent, Anathemate ferirentur*, That Tithes and first fruits might be offered by the faithfull, and the withholders might be excommunicated?

And why might not both these haue beene published vpon the determination of *S^t. Hierome* (who was the Oracle to *Damasus*) in that *Epistle*? If therefore the first Canon be truly his, this Canon and *Epistle* haue great probabilitie and

occasion to haue beene, though not vntill *Binnius* time out of *Baronius* obseruation, these were set foorth amongst the Councells. Oblations detained by the Laitie, why not then a Canon to forbid it? and why may not a question of the right bee resolued in an Epistle? But to take away that which might seeme to be colour for this Canon:

The Epistle of Saint Hierome as written to that Pope vpon that Question, utrum vsus Decimarum & oblationum secularibus peruenire possit, related c. 16. q. 1. c. quoniam, is iudged counterfait: neither tastes it of him, or of any neere that age: nor hath it euer beene receiued amongst that most learned fathers workes, saith he.

Animad. 23.

This *Epistle* for that part which is in *c. 16. q. 1. c. quoniam*, albeit it resemble not the swelling stile of that eloquent Father, and containe doctrine euen contrary to his, in his *Epistle to Heliodorus* where he saith, *Alia Monachorum est causa, alia Clericorum, Clerici pascunt oves, ego pascor, Illi de Altario viuunt, mihi quasi infructuosa arbori securis ponitur ad radicem, si munus ad Altare non defero*, There is one condition of Monkes, another of Clarkes, The Clergie feed, I am fed, They liue of the Altar, but the axe is at the roote of me as an vnfruitfull tree, if I offer not at the Altar: Whereas this *Epistle* resolueth, that *Monkes* may haue Tythes and so *viuere de altari*, liue of the altar, not onely *attendendo paupertatem*, in regard of neede, but *attendendo religionem* in regard of order in religion.

Yet for all thereasons of our *Author* it may seeme probable to bee his. If it taste not of him or that age, for the doctrine of Tythes due; that is manifested in the *Catalogue* both out of himselfe and others of his time, not to bee vnconuenient. If for the occasion of the determination of such a question, that is manifest before out of the Canon, *c. 10. q. 1. Hanc consuetudinem*, which from *S^t. Hieromes* resolution in this *Epistle* had the Counsell, as to him that reades the Chapter next saue one before *c. quia Sacerdotes*, it may plainly appeare. Grant therefore, that may be of *Damasus*, and this may

may be S. *Hieromes*, or of his age. If it taste not of him for the *style*, though it may not be S. *Hieromes*, yet in that age euery one wrote not so eloquently as hee. And that this was not receiued into his workes, perhaps was, for that some fragments onely remaine, and not the whole Epistle. But this to be S. *Hieromes* surely *Innocent* the third thought, or else hee would not haue suffered the authoritie out of this Epistle to be vrged against a plaine sentence of *Leo* his predecessor, and haue strived to reconcile them. But this is enough against the Authour, who makes weake exceptions, and the last is his owne Marginall quotation.

*Extr. de his
qua sunt à
pælas c. cum
Apostolica.*

ANIMADVERSIONS on the fift Chapter.



IN this Chapter, proceeding according to his proposed Methode, He first enquireth after the paiment of Tythes, in the next 400. yeeres, and therein granting the vse at *Millain* and *Hippo*, hee produceth a saying of S. *Hierome* in his Epistle *ad Nepotianum*; the words are spoken in the person of a Clergie man: *Si ego pars Domini sum & funiculus hereditatis eius, nec accipio partem inter ceteras tribus, sed quasi Leuita & Sacerdos vino de decimis, & altari seruiens altaris oblatione sustentor: habens victum & vestitum his contentus ero, & nudam crucem nudus sequar*: If I be the Lords portion, and the lot of his inheritance, neither haue any part amongst the other Tribes, but as a Leuite and Priest liue of the Tythes, and seruing at the Altar am maintained by the Altar, hauing food and raiment I will be content therewith, and will euen naked follow the naked crosse. This place hee diuerteth, as if *de decimis* there, were but a continuance of the comparison made by *quasi Leuita*, as if he had said, but line like a Leuite, that lined of the Tythes,

*Pag. 46.
Num. 1.*

H

and

and seruing at the Altar, am maintained by the offerings at the Altar.

Animad. 1.

1. Cor. 9.

But herein His coniecture cannot holde, vnlesse that Clergie man did deligne thereby no certaine living, for that the latter seemes to be more figuratiue then the first: If therefore to liue of Tythes continue the comparison with the *Leuites*, then, to liue of the oblation of the Altar is much more: (the same phrase in the Apostle hauing reference thereto.) But howsoeuer, if in comparison, yet equall; As the *Leuite* by Tythes, so I. But herein also obserue a fraude in the pointing, the Distinction being put after *Vestitum*, Raiment; as if to haue meate and clothing, were the Tythe; whereas it should be after *Sustentor*, am maintained by the Altar: This it may be was the Printers fault, but yet perillous.

Page 47.

Cassian. Collat.

21. cap. 1. & 2.

Next, In Egypt some holy Abbots had Tythes of all fruits offered them; where, it appeares that this Abbot receiued them as a treasurer for the poore. And in his Reuiew p. 465. was not of the ministring Clergie properly taken, but like those in Palladius his *Lausiaca Historia*.

Animad. 2.

Videsis locum citatum.

Lib. 6. cap. 29.

Iohn the Abbot in Cassian receiued Tithes, not as Abbot, but *quia præsidebat Diaconia*, to which place for desert hee was chosen, and therefore saith, *Cuius dispensatio mihi credita est*; And indeed as *Sozomen* relateth, was properly of the ministring Clergie, for he was a Priest, *Piammon & Ioannes — exquisitissime Sacerdotio (Presbyteri enim erant) & summa cum reuerentia perfungebantur*, They exactly executed their priesthood and with great reuerence, for they were Priests. Which might also haue beene well collected out of Cassian in the same chapter, for that it followeth *Eis cœpit, secundum Apostolum Spiritualia seminare, quorum metebat dona carnalia*, Hee beganne according to the Apostle to sowe to them spirituall things, whose carnall things hee reaped; whereas *Monachus plangentis non docentis habet officium*, The office of a Monke is to mourne, not teach, as *St. Ierome*. And the poore, for whose vse he receiued Tithes, were principally his *Canobita*, of whom some might be Priests and Deacons,

Aduers. vigilantium.

as the *Law of God* so often vrged in his *Sermon* may import; as also for that in the *Lanfiaca Historia* by *Palladius*, I haue obserued many *Deacons* and *Priests* in such companies, and so was *Cassian* himselfe though a *Monke*. But that the *Tithes* and *Reuenues* of the *Church*, aboue the necessitie of maintenance, were also by the dispensation of the *Clergie*, *ex debito Charitatis* to be communicated to the poore, must for the ancient times be granted: But obserue those *Tithes* were annually paid *Diaconie* to that office as appeareth *cap. 8.* of the same *Collation*, where speaking of *Theonas*, that after succeeded this *Iohn*, *Cum Decimas frugum suarum solitus esset Diaconie annis singulis dependere*. When he yeerely payed his *Tithe* fruit to that storehouse.

The like may bee answered for those who offered *Tithes* to *St. Seuerine* as *Eugyppius in vita*, and by him to the poore; which is his next authoritie: Cap 17. & 18.

The words import so much, because he calleth it *Mādatum ex Lege notissimum*, The notable commandement in the *Law*, now that must needs aime at the *Clergie*, for whom onely the commandement in the *Law* was *notable*, and hee confesseth it to hold in the *Gospel*. But searching the quotation, it appeares to bee poore *Captines*, yet, that they might haue them, euen almost in the next words, he addeth, *pro decimis autem, ut diximus, dandis quibus pauperes alerentur, Norici quoque Presbyteros missis exhortabatur Epistolis*. To giue these *Tithes* to feed the poore, he wrote to perswade the *Pannonian Priests*. Whence, of dutie it appeareth how they belonged to the *Priests*, but by their permission were disposed to the poore. This if Hee had not concealed, might haue marred his cause. Animad. 3.

The practise remembred in the Council of *Mascon* shall be considered after. P. 48.

Leo the great was *Pope* from 440. to 460. hath diuers *Sermons* *De ieiunio decimi Mensis*, & *eleemosynis*, wherein hee is earnest and large in stirring up euery mans deuotion, in offering to his *Parish Church*, part of his receiued fruit, but speakes

not a word of a any certaine quantitie.

Animad. 4.

Neither speaks any one word in those Sermons, to stirre up any mans deuotion to offer to his Parish Church: I am sorry, I haue cause to doubt, that He tooke this at the second hand, or else he would neuer haue published such an vntrueth, to make at the best, but a Negative argument for his errour. Indeed Leo in his *Sermons de Collectis*, intreateth, that *per omnes Regionum uestrarum Ecclesias*, In all your Churches there might be *Spontanea Collecta*, Free gatherings, *Voluntaria ELEMOSYNARUM oblatione*, voluntary offerings of Almes for the poore not the Parish Church: But in the other Sermons quoted, *De ieiunio decimi mensis*, &c. no mention of Contributions, either for, or in the Parish Churches. This is a great ouerlight, but in the next is as great a weakenesse.

Serm 3 & 4.

Serm. 2.

Saint Chrysostome hath Homilies touching the Church maintenance, in which you might wonder that Tithes were omitted, if either deuotion or doctrine especially in those Easterne parts had made payment of them of any common use; the Homilies are, In *Epistolam ad Philippenses*, & *Serm. 103. Tom. 6. Edit. Saul.*

Animad. 5.

Hom. 4. 1.

A strange argument: Saint Chrysostome in those Homilies doth not remember Tithes; therefore no Tithes payed then, and there: But what if in the imperfect worke vpon Matthew he say it, as before? and in the 18. Homilie vpon the *Actes*, in the 4. Hem. vpon the Ephesians, as in the Catalogue is cited; shall his Negative, against which are so plaine exceptions, preuaile? No wonder he there omitted them, where, by particularizing he might haue procured more enuie, (for one of the Sermons is against the Enuiers of the Churches estate) yet elsewhere required them by name, when there was no such occasion: But what was the Doctrine and practise of those times, see the Catalogue.

P. 49.

Num. 2.

A perpetuall Right of Tithes was consecrated to some Churches, by grant or assignement, out of such and such Lands, at the Owners pleasure..

Animad. 6.

This is the Paradoxe of his whole booke, his New opinion of Arbitrary Consecrations, not pointed at by any before, as in the

the Reuiew, pag. 470. But *hee cannot prooue*, that any such endowment was *at the Owners pleasure*, without the authoritie of the Bishop, consenting and graunting: As for his quotations, nothing proouing the Consecration at the Owners pleasure, (of the 4. Councell of *Arles*, *Vt Ecclesie antiquitus constituta, nec Decimis, nec ullâ possessione priuentur*, Can. 9. anno. 813 That Churches anciently endowed, may neither bee depriued of Tithes, or other possessions and that other in the Capitulars; *Ecclesie antiquitus constituta. nec Decimis, nec alijs possessionibus priuentur, ita ut nouis oratorijs tribuantur*, L. 2. c. 36, &c. Let not Churches anciently endowed, either bee depriued of Tithes or other possessions, to bee giuen to other new Oratories) I desire the *Reader* to take notice of, against hee shall denie in the historie of *Charles Martel*, about 60. yeeres before, that *no Tithes were generally annexed to Churches*, to which time no doubt, the word *Antiquitus*, may very well extend, and further too; *Antiquum ante eum*, not *in seculo proximum*.

But for a preamble against the deuice of *Arbitrary Consecrations*, this I suppose should be requisite, that he should not only shew how Patrons by Charters conueied Tithes, but expressly prooue, that no Bishops had necessarie consent to such conueyance, and to assigne or collate them, because then the Canons, and the Temporall and Nationall Lawes, did not suffer any thing in Ecclesiastical reueneue, to beedone without the Bishops, and *supponitur pro iure, donec probetur contrarium*; so that although in many conueiances the Bishops Charters are not extant, or concealed, yet they must be præsupposed, and are almost in euery one of those proposed by him, by circumstance to be deduced.

But to proue such assignements of Consecrated Tythes at Pag. 49 the owners pleasure, there are brought, first, the *Donation of Pipin to S. Monons Church*, for so he understandeth these wordes in *Molanus de Sanctis Belgij* in 18. Octobris in the life of *S. Monon. Beato viro ob Trinum Christianitatis Martato, Pipinus rex Regulariter decimas obtulit, quas habet inter Letiam & Urtam*; To

that holy man slaine for the Title of Christianitie, King Pipin gaue royally the Tythes he had betweene Lesche and Ourt.

Animad. 7.

This Donatiō by King *Pipin*, sure was of *infeodate Tythes* taken away by his Father, which the phrase *quas habet*, doth insinuate, but if *other Tythes*, especially since they were bestowed vpon a *Cathedrall Church*, why should any misdoubt the consent of the Bishop for the benefit of his said Church? The next *Donation* produced, being many yeeres before, expresseth the consent of *Vindicianus a Bishop* to the gift of *Theodorick*, and for the time of *Charlemain* the sonne of this *Pipin*: Obserue what *Luithprandus Ticinensis* or some Author rather before his time, in the life of *Adrian* the first saith, *Carolus in loco Osbrugge vocato, Episcopatum constituere & decimis nouiter ad fidē conuersorum — Papa ita dictante & privilegijs suis confirmante dotare deuouit*. Charles did vow to erect a Bishopricke and endow it with the Tythes of the new Conuerts, the Pope allowing and confirming it with priuiledges. But in the life of *Adrian the second*, It is said that he gaue to the Church of *Hersfeilt Anno 860.* certaine Tythes in *Frissonevelt* and *Hassaga* adioyning to the Diocesse of *Halberstadt*, *Quas Stephanus Papa in Basilica B. Petri die Sancto pasche, sua auctoritate & Imperatoris subscriptione, & Hildegriuo Halberstadenfi Episcopo prasente, confirmauit. Carolus quippe omnes decimas in Saxonia constituerat ad Regale seruitium & eas Rex dare potuit quo voluit.* Those Pope Stephen by his authoritie, in the presence of the Diocesan confirmed, Though Charles had taken all the Tythes of Saxonie then by him conquered and conuerted to his owne vse to giue whither he would, since therfore before and after it was so, he must prooue the Negatiue, that now it was not, or else not inforce Arbitrarie consecration from this Donation.

The next Donation is of a *Decimanclain Curte Rodulfi* to the Church of *Arras* out of the *Chronicon. Cameracense & Atrebatens. lib. 1. cap. 15.*

Animad. 8.

Where first obserue, that this is confirmed and giuen by the

the Bishop in the place quoted, and confirmed by *Theodorick* the King. Secondly, That it is called *Decimacula* a small Tythe, which must needs bee in comparison of greater vsually offered; though now translated by *Vindicianus* the Bishop his authoritie, and confirmed then by Pope *John* the fift euen in a Synode. All this is in the same Chapter; wherein are many other circumstances to perswade the Trueth of this.

Another, is of *Pipins* confirmations to the *Abbey of Fulda* of whatsoeuer it had or should haue (among other things) *in decimis fidelium*.

How may this inferre other then Translations, and that as before by consent of the Diocesan Bishops; this being a confirmation of consent to what Archbishop *Boniface* the founder thereof had procured and ordered? The Ms. Register I see not to extract other answer: but in that it is a confirmation at the foundation of the Abbey of Fulda Anno 742. and there *Decimæ* are contra-diuided to *Donis & oblationibus decimisque fidelium*, I obserue the Tythes were not *Dona aut oblationes*, gifts or oblations, therefore not of bountie: and because they are called Tythes, were due before such Translation to the Abbey: And that this was but two yeeres, after the time of *Charles Martell*. Animad 9.

Next, is a negative argument out of *Marculphus* his exact formule, and precedents of all such Donations and Cessions to Churches, where Tythes amongst other things specified are not named, and therefore as he supposeth were not.

But that was not because they were not payed, but because they were not in the dispose of Lay conueyers, and arbitrarie, vnlesse wee will imagine that any would giue their lands and all other commodities, there specially named, and would reserue onely the Tythe. But indeede that that was payde by the second Council of Mascon, the fourth Council of Arles, and the Capitularie, both cited. p. 49. doth appeare, namely that the old Churches were endowed with Tythes; of which more in the following Animaduersion. Animad. 10.

Next

Num. 3.

NEXT is the History of *Charles Martells* sacriledge, wherein (because it is of so great consequence) I will examine all his Reasons, both in this Chapter, and the *Review* by him produced; which while I doe, gentle Reader, afford thy patience.

Since *this Story*, if true, were great authoritie both for generall payment, and speciall endowment at those times of great antiquitie and faire prooffe, as himselfe confesseth, pag. 51. And would greatly oppose the originall of *Infeodations* by him defended, pag. 112. And in generall his whole discursive of *Arbitrarie consecrations*, which save some few, are all since his time. He sayth it can never be iustified, pag. 51. and that they that referre *Infeodations* unto his time, or any age neere him, are in grosse error, neither is there mention of them for above 300. yeeres after him. pag. 112. & 403. that it is a common error---obstinate ignorance to defend it, in the *Review*, pag. 465. And for prooffe addeth many reasons.

M. Seldens
Arguments.

First, That by no olde Author of credit he is mentioned to have medled with Tythes.

Secondly, The vision of *Eucherius Bishop of Orleans*, who saw him damned for it, and that by search (according as an *Angell* admonished in his Tombe) it was also confirmed for trueth, there being found in it, no relique of him, but onely a dreadfull serpent: This altogether false.

Thirdly, Tythes in his time were not so uniuersally annexed to Churches, as that they could be the maine object of such a sacriledge.

Fourthly, nor are they reckoned so among those *Ancients* that largely speake of *Lay-mens* oppressions, by defacing whole Monasteries and Bishopricks in the times that succeeded.

In the Review
pag. 465.
Constitut. Imp.
Tom. 3. p. 177.

Fifthly, In the *Laws of Restitution* by *Caroloman* and *Pippin*, as *Goldastus* in a better copy relates: They are called *Pecunia* not *Decima*: neither the *Nona* and *Decima* restored were any thing, but as Rent of land, and the twelve pence onely of euery *Casata*. Whence the Argument is thus; That, was restored which

which wastaken away ; but Tythes were not restored, therefore Tythes were not taken away.

Yet for all these faire shewes, I hope out of that small reading, and fewe bookes I haue, to make it most plaine, and throughly to refute all his reasons. Animad.

That he was a notable Church-robber; that he died miserably, is confessed; that his sacriledge was in Tythes shall thus be prooued.

Agobardus, *who was very learned and of great iudgement*, as himselfe truely stileth him, pag. 65. He saith it, in his Excellent booke *de Dispensatione, Ministerio & ordine totius rei Ecclesiasticae contra Sacrilegos siue Simoniacos*, written in the time of Lewes the sonne of Charlemaine the Grandchild of Martell: For there, admonishing a Counsellor to the Emperour, of the disorder *In rebus Ecclesiasticis quas contra vetitum, & contra Canones tractant, & in usus proprios expendant homines Laici*; In Church-goods, which against Law and Canons Lay-men vse and spend to their owne occasions: After in the next pag. 259. he objecteth, *Sed quoniam quod de sacris rebus in Laicales usus illicitè translatis dicimus, non fecit iste Dominus Imp. Sed predecessores eius, & propterea isti impossibile est omnia emendare, quæ antecedentes malè usurpata dimiserunt*; But because what we speake of holy things vnlawfully translated to Lay-vse, this now-Emperour did it not, but his predecessours; and therefore it is impossible for him to amend all, which those that went before did wrongfully vsurping, put away. Now who can here be signified by *predecessores*, and *those that went before*, but Charles Martell; Caroloman and Pipin and Charlemain being Restorers of what by Charles Martell was taken away? Now that amongst these things which the predecessours of Lewes, *Male usurpata dimiserunt*, wrongfully vsurping did put away; that Tythes were, besides Agobardus his proouing of them, *in the same processe*, to be due to the Clergie by the Law of God (as by the places cited in the Catalogue may appeare out of the pag. 277.) In the pag. 283. hee concludes, *Tali itaque ut dictum est, nobis*
I cordis

To the first Argument.

Circa ann. 821.

cordis deuotione Primitia vel Decima consideranda sunt, tanta ueneratione intacta seruanda, & cum huiusmodi confessionis puritate offerenda. --- aliunde subministrandum est Canibus & Canallis, ceteraque tam hominum quam animantium ministris, quæ vel ad delicias, vel ad pompas turpesque iocos à diuitibus possidentur. with such deuotion of heart therefore ought Tithes and First fruits be considered, with such *Reuerence* they ought to be kept vniolate, and with such *puritie* of confession to be offered: — from other meanes must dogs and horses and other men and beasts, kept by rich men for state and pleasure, haue maintenance. If this be not a full prooffe, both for the *Sacriledge* of *Charles Martell* in Tithes, for the prooffe of *infeodations* then; I leaue to the indifferent Reader: Nay before, the same Authour pag. 269. saith, *Nunc non solum possessiones Ecclesie, sed ipsa etiam Ecclesie cum possessionibus venundantur &c.* Now not onely the Church possessions, but the Churches with them are sold: Like to which is the Præcept of the same *Lewis* before spoken of, and *Lotharius* his sonne in *Flodoard*; *Quedam pradia quæ eidem Sanctæ sedi quondam ablata fuerant, deuota mente restitimus, id est, in Suburbanis ipsius Ecclesie Titulum Sancti Sixti, nec non & Titulum Sancti Martini cum appenditijs — in Castro Vonzensi, Titulum Baptismalem, & Titulum in eadem parochia iterum Baptismalem cum suis appenditijs &c.* Certaine possessions which heeretofore were taken from that Sea, wee deuoutly haue restored; that is the Suburbs of the Church, the Title of *St. Sixtus*, also the Title of *St. Martins* with the appurtenances — In *Castro Vonzensi* the parish Church, and another parish Church there, with the appurtenances &c. Who cannot see what *pradia Charles Martell* tooke away, euen parish Churches?

Other authorities shall occurre in the answer to the following reasons, *Martinus Polonus* therefore not the first relator.

Ad. 2.

The second reason, is the *fiction* or *Hobgoblin storie*, as hee calleth it, of *Eucherius of Orleans* his vision about the Damnation of *Charles Martell*. *St. Cyprian* hath a saying to one,
lib.

*Lib. 2. cap. 19.
pag. 143.*

lib. 4. Epist. 9. *Quamquam sciam omnia ridicula & visiones ineptas quibusdam videri, sed utique illis qui malunt contra Sacerdotes credere quam Sacerdoti,* It seemes true in our Authour concerning this. Who acknowledging *Reuiew*, pag. 465. that there are indeed very ancient Authours to iustifie it, as *Adreualdus* in *Ludonicus Pius* his time, in his first booke, *De Miraculis Sancti Benedicti*, cap. 14. And *Flodoardus Remensis Historia* lib. 2. cap. 12. who liued Anno 960. Who (let me adde) more especially concerning this vision, saith, *De quo, patrum scripta relatione traditur, &c.* Of whom is deliuered by the written relation of our forefathers, that *St. Eucherius* returning from banishment &c. And the Capitularie exhibited to *Lewes 2.* Anno 858. To which *Iao* might bee added in his Chronicle (though in a wrong place, for hee placeth the Narration vnder the Storie of *Carolus Simplex* the sonne of *Ludonicus Balbus*, but it must bee referred to this *Charles Martell*) for the words are, *Hic Tutudi quod Martellus dicitur à suis dictus est, & quia in Regno suo vix aut raro pacem habuit, ideo res Ecclesiarum suis militibus in Stipendium contulit maxima ex parte. Qui mortuus in Ecclesia B. Dionisii Martyris sepultus à sinistra parte Altaris maioris, visus est noctu in specie Draconis effracto sepulchro per vitreum Ecclesia cum magno terrore exiisse;* This *Tutudi*, who by his people was called *Martellus*, because seldome he had peace in his kingdome, therefore he gaue for the most part the Church estate for wages to his soldiers: who being dead, and buried in *St. Denis* Church on the left side of the great Altar, he was seene by night in shape of a Dragon breaking the sepulchre, to goe out of the glasse windows with great terrour. Yet, to fasten some shew of falsehood vpon the storie, that by discrediting it in this part, in the rest it may not haue credit, *Baronius* forsooth shall be followed: But if such Authors shall not preuaile, sure *Thomas Cantipratensis* shall little haue credit, in the vision of the yong man that died and reuiued, whom the deuils accused, *Quia decimas de bonis & agris suis Sacerdoti substraxerat*, Because he withheld the Tithes of his fields and goods from the Priest. Or how

Post Canonem
59.c.10.q.1.

*In historia Ap-
p'm, lib. 30.
p. 8. c. 26.*

In Chronico
Sponhemensi. ad
annum 1212.

shall *Trithemius* relation of a vision of one *Adelbertus* 406. yeeres agoe, who dying also and reuiuing, *Cum aliquando in decimando fruges in agro suo, debitum ordinem non seruasset, hæc aiebat; O si scirent homines agricolæ & vinitores, à quantâ distributione, & horrendissimis pœnis puniatur dolosa decimatio?* when he had not rightly tithed his corne, thus he said, O that husbandmen, and Vineyard keepers knew, with what strict and horrible punishment fraudulent Tithing is punished, &c. how shall this haue any regard? But this reason makes nothing directly to the argument, but might haue had occasion aswell from his other *Sacriledge*, as that in Tithes; neither doe I vphold *visions* against *truth*, but *Antiquitie* against *Baronius*; *Relatoris fide, non Authoris præsumptione* in *Vincent. Lyr.* phrase, not as a bold Author, but as a faithfull Relator. And for further credit both of the vision, and for the time of *Encherius* death, I will referre the Reader to peruse the Annalls of the Church of *Orleans*, written by *Carolus Sausséyus* Deane there, who in his fift booke in the life of *Encherius*, doth fully answer *Baronius*, and this Author out of *Baronius*;

Num. 21. &
deinceps.

Ad. 3.

And now succeed the reasons of importance. *Tithes* in *Charles Martells* time were not universally annexed to Churches. They were. First, it is confessed by himselfe, pag. 65. where speaking euē of the time of the second Councell at *Mascon*, hee saith; *Yet withall, no doubt can bee made, but that in most Churches in this time, amongst the offerings of those of the deuouter sort, Tenth or greater parts of the Annuall increase were giuen according to the doctrine of those Fathers before mentioned, and these other testimonies: whereto you may adde, that complaint of Boniface Archbishop of Mentz about 750. (who lived in Charles Martells time) Lac & lanas, ouium Christi oblationibus quotidianis ac decimis fidelium accipiunt, & curam gregis Domini deponunt: They receiue the milke and the wooll from the sheepe of Christ, in daily oblations and Tithes, and neglect the Lords flocke.* There also hee adds a passage of a *Ms. Exhortation* written about 900. yeeres agoe; where it is shewed to be the proprietie of a good Christian to pay Tithes. And himselfe

selfe doeth relate them, as consecrated to the Church of Utrecht by his father and himselfe, pag. 73. &c. And the phrase *Ecclesia constituta in Decimis non priuentur*; Churches endowed with Tithes, not to be depriued, in the 4. Councell at Arles, & capitul. libr. 2. cap. 3. &c. euen expounded by himselfe of these times, shews it, pag. 49. And indeed that Canon of that Councell of Arles must be of an vnanswerable prooffe, if according to *Anselmus Lucensis*, Boniface the Archbishop of Mentz was President therein, who died Anno 755. but twelue yeeres after Charles Martell; and that also by the authoritie of Pope Zacharie; who died almost foure yeeres before Boniface; so that it must seeme very neere his time.

In his Collectanics.

Secondly, suppose they were not vniuersally annexed to Parish Churches, yet to the Bishop, as to the publike Treasurer of the Diocesse, they were of duetie payed. And were they not principally Bishopricks which he infeodated? *Episcopales sedes traditæ sunt Laicis cupidis adpossidendum*. Bishops Sees were giuen in possession to couetous Laymen, So Bonifacius in Epistola ad Zachariam; *Non solum Rhemensem, sed etiam alios Episcopatus regni Francorum, Laicis hominibus & comitibus dedit, ita ut Episcopis nihil potestatis in rebus Ecclesiæ permitteret*. He gaue not only the Archbishoprick of Rhemes, but other Bishopricks also of France, to lay men and his companions, so that the Bishops had no power left to doe any thing in Church affaires, So out of Flodoardus Pap. Massonius; *Episcopia Laicis Donata*, Bishopricks were giuen to Lay men, So Hincmarus.

In Editione Veneta Conciliorum Tom. 3.

In Annal. in vita Dagoberti.

Ep. 6. cap. 19.

And thirdly, it being apparent that they then were due to be paid to the Clergie, as by the Councell at Mascon appeareth, Nay before that, which is most remarkeable, in the time of S. Remigius, who baptized the first king Clodouens; amongst other reuenue of his Church, that Bishop of Rhemes, by his will, ordered Tythes of certaine villages to be imployed aboue what were, for the reliefe of certaine poore widdowes of the same Church: His will is perfit in Flodoardus, wherein are these wordes, *Viduis 40. in porticu Ecclesiæ alimoniam præsto-*

Hist. Rhemens. lib. 1. c. 18.

lantibus quibus de Decimis villarum Calmischiaco, Tessiaco, Nona villa stipendia ministrabantur, superaddo de villa Huldriciaca, &c. France no sooner conuerted, but Tything followed, And the reuenue of this Church of Rhemes, was a chiefe part of *Charles Martells* sacriledge.

*Vide proemi-
um Helgaudi
Floriacensis, ad
Epit. vita
Roberti Regis.
In Chron. Casin.
796., in Edis.
parisi.*

*Quercetan. in
Not. in p. Abe-
lard. p. 1168.*

*Lib. 55. capitul.
cap. I.*

Cap. 35.

It is related also how *Abbot Leodebodus* about the yeere 620. gaue Tythes of certaine villages, in some Parishes to the *Abbey at Floriack*. It also appeareth, how Pope *Zacharis* in the first yeere of his Papacie, gaue a priuiledge to the *Monasterie in Monte Casino* and to all the Cells thereof, *vt Nullus Episcopus—Decimas tollat*, That no Bishop might take away their Tythes, Implying, that else they might, as belonging to the reuenue of the Church, and their iurisdiction, howsoeuer they might obtaine it. A remarkeable authoritie; As in the priuiledge of Pope *Iohn the third Anno 562.* the Tythes giuen to the *Monasterie of S. Medard* were priuiledged. Furthermore *Agobardus* in his booke, written in the very beginning of *Lewis* his raigne, *Contra insulsam vulgi opinionem de grandine & Tonitruo, pag. 155. Multi sunt qui sponte Sacerdotibus decimam nunquam donant, viduis & Orphanis caterisque indigentibus Eleemosynas non tribuunt, quæ illis frequenter prædicantur, crebro leguntur, subinde adhuc exhortantur & non acquiescant*, Many there are who neuer willingly giue Tythes to the Priests, nor almes to Widdowes and Orphans and other poore, which are daily preached vnto them, and read often, and continually are vrged vnto them. And *Hincmarus* (who though he be something later) saith, *Ausoldus compresbyter noster, præcepit vt in ipsa Capella Missa non celebraretur antequam homines ville ipsius suam decimam Presbytero suo secundum antiquam consuetudinem darent*, Obserue there *antiquam consuetudinem*, *Ausoldus* our fellow Bishop, commanded that they should say no Masse in that Chappell, before the men of that village paid their Tyth to the Priest, according to the ancient custome. After, *De Ecclesiarum datione quæ etiam non amplius quam dotem suam—habent cum decima fidelium, premia requirebas*, Thou requiredst rewards for the gift of Churches,

Churches, which had nothing but the Glebe--and Tythes of the faithfull. And elsewhere, *Vnde necesse est ut per singulos annos ministri Episcoporum inquirant, quid parcat in singulis Ecclesiis de parte decime quæ iuxta Sacros Canones Ecclesiæ competit,* Whence it is necessarie, that euery yeere the seruants of the Bishops shall inquire what part of the Tithes may bee spared in euery Church, which according to the Canons belongeth vnto the Church. It is therefore manifest that they were due, which also *Alcuin, Walafridus Strabo, Rabanus Maurus, &c.* doe in the times ensuing testifie, as appeareth in the *Catalogue*. And most apparantly annexed, in an Epistle amongst those of *Boniface Mogunt*, where a poore Curate that had agreed for to serue the Cure for a Priest for halfe the Tythes, complaineth to *Lewes* the Emperour, which also is quoted by himselfe. Then how might not these Ecclesiasticall profits be, as indeede they were, a great subiect of the sacriledge, since they were so vniuersally annexed?

And against the next reason were so reckoned, among those *Ad q.* Ancients that largely speake of Lay-mens oppression by the defacing whole Monasteries and Bishopricks in the times that next succeeded. For so did *Agobardus*, as before; so did *Hincmarus* in his booke entituled *De statu Ecclesiæ*, whose words are, *Quid de vobis dicam, Seculares, qui non solum Ecclesias, sed etiam ipsa Altaria possidere vultis? numquid vos, qui oblationes pauperum comeditis & bibitis ad offerendas Deo hostias pro ipso populo acceditis? Vos horrea frumento, & Cellaria ex his quæ Ecclesiæ sunt vino complebitis, & Sacerdotes eius fame affligetis? Cur non pertimescitis iudicium Dei? panes propositionum non licet comedere nisi mundis & purificatis Sacerdotibus, & vos cum uxoribus & ancillis vestris, & quod peius est, nonnulli cum scortis, Decimas & oblationes fidelium manducabitis? &c.* What shall I say of you Lay men, who not onely will possesse the Churches, but the Altars also? Will yee that eate and drinke the offerings of the poore, approach to offer sacrifice for the people? Will ye fill your barnes with corne, and your cellars with wine, and shall the Priest starue? Why feare

feare ye not the Iudgement of God? It was not lawfull for any to eate the Shew-bread, but the cleane and purified Priestes; and will you with your wiues and wenches, nay which is worse, with your harlots, eate the Tythes and oblations of the faithfull? &c. Let the owners of Appropriations heare this, and then as the partie with whom this Author expostulates, it may be hoped that they will say, *Quod si ita est, immo quia ita est, cogor iudicare amicos meos quæ sibi iniuste conlata sunt, iuste retinere non posse*; If it be so, nay because it is so, I am enforced to iudge that my friends cannot iustly retaine that, which vniustly was giuen them. And so also did the many Synods vnder Charlemaine: which may appeare in the next reason.

Ad 5.

The last reason, and that of some consequence, if true, is, *that it cannot appeare that they were restored by Carloman and Pipin; for the Decimæ restored were as Rents of land, and the twelue pence out of euery Casata.*

Pag. 53.

First then he acknowledgeth *Decimæ* to be restored: And then the onely question is about the interpretation. Wherefore I much wonder that hee should be so *iniurious* vnto the *Centurie writers*, for relating the Canons of the Synode vnder Carloman in these wordes, *Decimas occupatas à prophanis restituimus*; As to adde such a marginall note concerning them: *Veteris huiusce aui sermonis ignari hallucinati sunt. In ipsa Synodo ita legerant, fundatas pecunias Ecclesiarum Ecclesiis restituimus — pecunias autem Decimas significasse opinabantur, sed perperam & ridiculo*: They being ignorant of the old language of this age, were deceiued: In the Synode they reade, wee restored *Fundatas pecunias Ecclesiarum*, but they thought, (though falsly and ridiculously) that *pecunie* signified Tythes. Would not hee retract his censure against the credit of those painefull collectors? Must now it bee acknowledged they had it out of corrupted copies? and that *Decimæ* and *Pecunie* is all one in the sense, and yet they haue no amends for so peremptory a censure; when if they related not the word, yet they did the sense? And yet which is strange, they quoted

Pag. 466.

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ted what they said, and that truly out of *Auentine*. And here also because the Author boasteth, pag. 466. of a better copy of that Synode published by *Goldastus* in his 3. volume, edit. anno 1610. yet in a latter Edition of another booke of Constitutions anno 1613. he hath retained the word *Decimas*: so that it may seeme his last thoughts are against our *Historian*.

Now therefore that of those *Nona* and *Decima* which were restored, that in the *Decima* a true Tythe was meant, and not in Rent out of lands receiued, shall by the Capitularies of *Charlemain* and *Lewes* be manifest.

But first let me take his owne confession, pag 123. *The Ninth and Tenth both there spoken of, were onely the Rent due from the Tenants of Church-land, by the ordinarie reservation of the Tenth, as of what was helde by mary, of it selfe due to the Clergie, and of the Ninth, as of the Rent and consideration to be giuen to them as Lessors for the receiued profits.* In the time therefore of the making such Lawes, there was an opinion of many, concerning the dutie of such Tenths of themselves due to the Clergie. These Tenths therefore beeing such Tenths and restored, shew that true Tithes, and not Rents reserved, were signified thereby. That the *Nona* were payed onely for the land, obserue. *Capit. lib. 5. cap. 147. De his qui agros Dominicos propterea neglexerunt excolere ut Nonas exinde non persoluant*, doth shew: (for, *Agri Dominicati* are not the Churches but the Kings Demesnes) Concerning those who neglected to till the Kings demesne land, that they may not pay the *Nona*; and yet for them, the defrauding of the Ninth for Rent is censured by Law: whence evidently appeareth the *Nona* to signifie a plaine Rent, such as in secular conueyances were reserved.

Vide Glossarium Legum Antiquarum, & Chronic. Camera. & Altred. bat. ns.

But the Capitularie makes it most plaine, and doth interpret the like, The words are, *De his qui Nonas & Decimas iam per multos annos, aut ex parte, aut ex toto dare neglexerunt, volumus ut per missos nostros constringantur, ut secundum Capitularem priorem soluant Nonas & Decimas cum sua lege, & insuper bannum nostrum. Et hoc ijs denunciatur, quod quicumque*

Lib. 5. cap. 145.

hanc negligentiam iterauerit, beneficium unde hac Nona & Decima persolui debuit amissurum se sciat. Ita enim continetur in Capitulari bonæ Memoriae genitoris nostri, in lib. 1. cap. 163. Quicumque Decimam abstrahit de Ecclesia, ad quam per iustitiam dari debet, & eam præsumptuose, vel propter munera, aut amicitiam, vel aliam quamlibet occasionem ad alteram Ecclesiam dederit, à Comite vel à misso nostro distringatur, ut eiusdem decime quantitatem cum sua lege restituat. Concerning those who for many yeeres haue neglected to pay the Ninths and Tenths, wee will, that by our officers they be compelled, according to the former Capitular, to pay the Ninthes and Tenthes with the forfeiture, beside our *Bannum*. And let it bee made knowre to them, that whosoeuer shal doe so the second time, shall loose the Benefice whence they ought to be paid, for so it is contained in the Capitularie of our famous Father, in the first booke *cap. 163.* Whosoeuer shall take away the Tithes from that Church, to which of right it ought to be paid, and præsumptuously shall pay it to another Church, either for gifts, or friendship, or other occasions, let him be compelled by our Shrieue or other officer, to restore the Tenth with the forfeiture.

Cap. 163.

This I haue repeated all, because the last parte is acknowledged by Himselfe to signifie *parochiall Tithes* properly, pag. 72. the former parte therefore must signifie the same, as being but the explication of this. But there is another in the First booke: *Vt qui Ecclesiarum beneficia habent, Nonam & Decimam ex ijs Ecclesia cuius res sunt, donent, & qui tale beneficium habent unde ad medietatem laborent, de eorum portione proprio Presbytero Decimas donent,* That they who haue Benefices of Churches, pay the Ninth and Tenth to the true Churches, and they who haue them to halfe, of their parte, let them pay to their owne Priest. Where note, in lands tilled to halfe, Tithes of the same kind, of the one halfe given to the Church from whom they held the Benefice, as of the other to their owne Priest, which must needs bee *parochiall Tithes*. Besides these and many others, why is so often in
the

the Capitularies a helpe for Incumbents, *non Redimere Decimas*, not to redeeme Tithes, (which must be vnderstood of True Tithes) vnlesse the True Tithes had beene both taken away from the Clergie the first possessors, and were restored of right by the meaning of the Capitulars?

The conclusion therefore is, that *Charles Martell* tooke away Tithes, truely so called, because that which was restored by his Successours was a true Tithe. And so both the reading and sense of the *Centurie* writers in their relation may haue trueth, and the word *pecunia Ecclesiastica* in the Councell not bee wrong interpreted by *Decima*, as a generall, by a speciall: and the originall of infeodations not bee else where sought then in *Charles Martell*: From whom the Annals deriue it, as *Krantzius* citeth, and *P. Blesensis* may seeme to aime at, where it is said, *Milites Galliarum sibi ius decimationis usurpant*, The Souldiers of France vsurpe the right of Tithing: Now to his souldiers did he conuey them: Not to recite the Canonists and later Historians which were infinite.

Metrop. lib. 1.

cap. 2.

Epist. 82.

But to resolute the Obiection, which concerning Infeodations from this *Charles* seemeth to bee made, namely, that this giuing by him, was no Infeodations, but onely leases for lines were made by Church-men, to such as the Prince appointed, of great parte of their possessions, whereupon certaine small Rents were reserved, Those leases were sometimes, upon the Princes request, renewed, but upon death of the Lessee, the estate and possession reuerted to the Church.

Obiect.

Pag. 52.

All this is false, and yet true, changing the time, for this is true in *Carolomans* time, who restoring some Church reuenue wholly, for the maintenance of his warres, still retained some vpon these better conditions. The Councell vnder *Carloman* is, *Capitul. lib. 5. cap. 3.* And the words are, *Statuimus quoque cum consilio seruorum Dei & populi Christiani, propter imminencia bella, & persecutiones multarum gentium quae in circuitu nostrosunt, ut sub precario & censu aliquam partem Ecclesiastica pecunia in adiutorium exercitus nostri cum indulgentia Dei retineamus; Ea conditione, ut Annis singulis de una-*

Sol.

quaque Casata solidus, id est, duodecim denarij ad Ecclesiam vel Monasterium reddantur, eo modo, ut si moriatur ille cui pecunia commendata fuit, Ecclesia cum propria pecunia reuestita sit. Et iterum si necessitas cogat, aut princeps iubeat, precarium renouetur, & rescribatur nouum, & omnino obseruetur, ut Ecclesie vel Monasteria penuriam & paupertatem non patiantur, quorum pecunia in precario prestita sit; sed si paupertas cogat, Ecclesie & domui Dei reddatur integra possessio: We ordeine by the counsell of the Clergie and people, in regard of the imminent warres and many inuasions, which are round about vs, that vnder the fauour of God, wee may reteine some part of the Church estate in Lease, for the helpe of our army, vpon that condition, that yeerely a shilling bee paied out of euery *Casata* to the Church or Monasterie; in such sort, that if hee die on whom the Benefice is bestowed, it shall reuert vnto the Church. And againe, if necessitie enforce, or the Prince command, the Lease may be renewed and another made: But chiefly let care be taken, that the Church or Monasterie bee not in penurie, whose estate is leased: for if need bee, let the Church haue the full or whole possession. This I haue repeated, that not onely the Authors select passages to expose the *Church reuenew* to be the bait for the State, may be seene, but euen the occasion, and the gracious conditions may bee obserued: And withall, which is to the quæstion, to declare the falsehood and craftie shuffling of the state of the time, from *Charles Martell the Sacrilegious*, to *Carloman the Religious*, and *Pipin the Pious* the restorers of the Church; this being vpon a new grace of the then Princes; nothing being receiued before, because inteodated: Which Pope *Zacharie* vpon *Boniface* his relation of the Canons of that Councell, doeth insinuate; *De censu vero expetendo, eo quod impetrare à Francis ad reddendum Ecclesiis vel Monasterijs non potuisti aliud, quàm ut vertente anno, ab unoquoque coniugio seruorum, 12. denarij reddantur, & hoc gratias Deo, quod impetrare potuisti:* Concerning the demaund of maintenance, since thou couldest obtaine of the French to be restored to the Church nothing

nothing but 12 d. of each *coniugium saruorum*, thanks be to God, that thou couldest obtaine it. Whence appeares that it was a new concession and vse in *Carolomans* time. And in the *Capitularie* exhibited to *Lewis the 2.* it is said, Whereas *Charles Martell*, *primus inter omnes Francorum Reges & Principes re: Ecclesiarum ab ijs separauit, & diuisit*: First, of all the French Kings hee separated and diuided from the Churches the goods therof: Now *Pipin* being not able to restore all, *precarias fieri ab Episcopis exinde petijt, & Nonas ac Decimas, &c.* Exinde, *from thence therefore*, not before, hee procured Leases of the Bishops, and Ninths and Tenthhs, &c.

But yet in *Goldastus* third Tome of Imperiall Constituti- Obiect.
ons, pag. 648. there is a Decree vnder *Theodoricke* the fourth King of France, and *Charles Martell* Maire of the Palace their names, which if true, doeth crosse this: The words are, *Res Ecclesiarum, ut subueniatur necessitatibus publicis, & solatijs militum, pro Dei Ecclesia, & bono statu Reipub. & vnius cuiusq; propria pace pugnantium, Statuimus, cum consensu Episcoporum, & placito Procerum regni, & adhortatione totius populi, ut necessitate exigente, liceat aliquantos ab ijs separari, atq; inter dignos & bene meritos diuidi, precarias tamen fieri ab Episcopis exinde volumus, & Nonas ac Decimas ad restorationes terrarum, & de unaquaque Casata duodecim denarios ad Ecclesiam, unde res erant beneficiata, dari constituimus*: We ordeine by the consent of our Bishops, and the pleasure of our Nobles, and the request of all the people, that for the publike necessitie, and comfort of those souldiers, which fight for the good of the Common-wealth, and the peace of each man, that it shall be lawfull to separate some of the goods of the Churches from them, and to diuide them amongst the worthiest: Yet from henceforth we will, that Leases be made by Bishops, and wee ordeine, that the Ninths and Tenthhs for the reparations of the land, and xii. d. out of euery *Casata*, should be giuen to the Church, from whom they haue the Benefice.

If this were true, *Pipin* and *Caroloman* restored nothing, for So?

they did as much. But himsele in the Reuiew, pag. 467. in desire to discredit the Capitularie exhibited to *Lewis* the 2. hath afforded a reason to denie this; his words are, *I somewhat doubt them, because the most known and certaine Lawes of Martells time, speake onely of xij. d. to bee serued out of eucry Casata, but the Nonæ and Decimæ grew not elsewhere into use, till after the beginning of the French Empire.* This therefore is no knowne and certaine law of *Martells* time, wherein the *Nonæ* and *Decimæ* are expressed: But if the other bee certaine, as they are, then infeodations were, and no leases onely in that time. Yet that in *Pipins* time, though not in *Charles Martells*, the *Nonæ* and *Decimæ* were by name restored, *Lewis* his decree in *Flodoard* maketh it plaine, where he saith, *Et sicut decretum est à pia Recordationis Domino & anno nostro Pipino Decimas & Nonas eidem Ecclesie—persoluant;* And as it was decreed by our religious Lord and Grandfather *Pipin* that the Ninths and Tenth should be paid: Besides the Testimonies before.

Lib. 2. cap. 19.
p. 142.

So that hence, besides from other later examples, that his assertion. pag. 112. is most false, *That there was no mention of Infeodations, for aboue 300. yeeres after him.* Whereas yet to crosse this, himsele citeth about the yeere. 900. an Infeodation of Tythes, from *Charles* the Bald (or *Charles* the simple, as *Donza* would haue it, to *Thierry* the first Earle of *Holland*) which I am perswaded is pointed at in *Concilio Meldensi. Anno 845. vnder Carolus Caluus*, not *Carolus Simplex*, or else it is some other such like, and is to this purpose worthy the reading: Others more might bee found within that time as by the Testimonies of *Agobardus* and others might be inferred.

P. 116.

Cap. 75.

So then in the whole storie, I suppose *His* assertions & weake reasons, may not preuaile against the substantiall truth thereof: but that it, and the consequences thereof may bee of faire prooffe, against his opinion, of the *Non payment* then; the denying the originall of *Infeodations* thence; the consecrations of new created Tythes sit hence; besides of the truth of the Storie.

Yet

Yet because in this Storie, the old word *Casata* occurring hath made him to vary his opinion, as whereas pag. 53. hee did interpret it, a quantitie of land; yet in the *Review* p. 467. He supposeth it, a house onely. Although I professe my selfe no Critick, yet this I would onely offer to his knowledge or remembrance, that Pope Zacharie did interpret it, by *Coniugium Senorum*, in the place before quoted: and that in the Councell at *Azatha*, there are these words *Casellas Can 7. vel Mancipiola*.

And thus much for this Storie, wherein I hope so much *Review* p. 466. hath beene vnfolded, that now vpon his promise hee may change his minde; And seeing some Syllables left in the writings of neere his age concerning his Sacriledge in Tythes, as we heere inquire after: and something that hath reference to the common payment of them, though not found in the lawes under him; (whereof I know none, but that vncertaine one) though immediately after him; hee will not remaine confident in what hee had admonished, nor thinke that euery man of an impartiall iudgement should be of his minde.

Concerning the Opinion, which he acknowledgeth p. 46. Num. 4. was great, of their being due; after S. Ambrose his authoritie heere allowed, the Hom. of S. Augustine in *Serm. de Tempore*. 219. is for the authoritie weakened, Thus,

Although some doubt, whether it be his or no, and albeit, the wordes are in a supposititious Treatise attributed to S. Augustine, Pag. 54. named, *De Rectitudine Catholica conuersationis*, saith hee;

Yet that it is his, may appeare for all his fly obiections. *Animad. 11.* First, for that *Cesarinus Arelatensis* (who as *Bellarmino* proo- *De scriptor.* ueth against *Tritthemius* liued within few yeeres after that fa- *Eccle.* ther, for he was president in the 3. Councell at Arles which was Anno 454. whereas S. Augustine died Anno 433) hauing vsed some of the wordes of that Homilie in his 14. Homilie, doeth in the 37. Homilie, cite him by name; *Dixit Augustinus*, Augustine saith, and then repeateth a great deale of this Sermon. *Beda* also who liued 900. yeeres agoe, citeth it, *In Scintillis.*

So *cap. 29.*

Pag. 210.
Can. 13.

So *Statuta Synodorum* a booke cited by himselfe, *Circ. Annum 900. Concilium Triburiense Anno 895. Walafridus Strabo*; And all these besides *Gratian* and many others, vnder the name of *S. Augustine*.

Secondly, the *phraſe* doth so well agree with his *M^r. Saint Ambrose*, as by conference may appeare.

Thirdly in the booke *De Rectitudine Catholica conuersationis*, (which whether it be supposititious or no, *Bellarmino* doubts) although our Author say, *Ipsissima huius vocabula habentur* in this booke, as if either all the *Homilie*, or all his quotation, were there; yet the passage in that place concerning *Tythes* is but very short, and *ipsissimis verbis*, in expresse wordes, not foure lines: which rather doeth confirme, then weaken the authoritie of this *Homilie*, whereout to other writings, though later, if not *S. Augustines*, such portions are translated: Neither can it be, that from so small a passage so large an *Homilie* should haue originall, but rather the smaller from the greater to haue beene selected.

Pag. 160.

And because pag. 160. hee aiming at this *Homilie*, and that of *S. Ambrose*, to lessen their authoritie, saith, *Remember that those Fathers affirme it not in Disputation, but onely in Exhortation to the people, which is specially observable to those who know the course of their writing.*

Animad. 12.

Giue me leaue to preuent it in place, and to adde my censure here. He that shall consider that none did then doctrinally oppose *Tythes* to procure *Disputation*, but onely some couetous people were backward that needed *Exhortation*, will not expect other publishing of it. And yet of both sorts of writing (though neither to be suspected) the doctrine of their *Homilie* is the more plaine trueth, and the trueth of *Disputation* but onely *ad oppositum*: In the one, powerfully perswading trueth, in the other, punctually refuting error. To discredit them therefore, because *Homilies* is a *prophane censure*, as if they did publish other then Trueth in Sermons, and would impose any thing vpon the consciences or credulities of their hearers, which in *Disputation* they durst not defend.

S. Hic-

S. Hieromes authoritie ad cap. 3. Malachie, is said to be 2. Pag. 55.
 bout the neglect of payment onely, not the right of them. And he
 addeth, *Who hence thinketh that his opinion agrees with S. Au-*
gustine and S. Ambrose concerning the duenesse, may as well
inferre, that all men were still bound to sell all they had: he speakes
onely, as admonishing Christians to giue their Almes to the poore,
and double honour to the Priest, leauing the quantitie to a Chri-
stian libertie.

For the first, who can imagine, that without right, and that *Animad. 13.*
 from God, he would reprehend the neglect of paiment so by
 the command of God? But his wordes are plaine, *Quod de*
Decimis Primitisq; diximus, quæ olim dabantur à populo Sacer-
dotibus ac Levitis, in Ecclesiæ quoque populis intelligite, quibus
præceptum est non solum Decimas dare & Primitias, sed & ven-
dere omnia quæ habent, & dare pauperibus, & sequi Dominum
Saluatorem: quod si facere nolumus saltem Iudeorum imitemur
exempla, ut pauperibus partem demus ex toto, & Sacerdotibus &
Leuitis honorem debitum deferamus: What wee haue spoken
 of Tythes and First-fruits, which heretofore were giuen by
 the people to the Priests; vnderstand the same in the people
 of the Church, who are commanded not onely to giue
 Tythes and First-fruits, but also to sell and giue vnto the
 poore: which if wee will not doe, at leastwise, let vs imitate
 the example of the Iewes, that wee giue some part of the
 whole to the poore, and we impart due honour to the Priests
 and Leuites. Here our Author stayes. And secondly for his
 inference see, First, how *croffe* hee is vnto himselfe, who said,
 that this passage was about the neglect of payment of Tythes,
 and yet now they are no Tythes. Then, how *fraudulent*, in
 the Translation of *Debitum honorem* (for double honour to
 haue reference to the Apostle) whereas this word *debitum*
 hath referēce to Tythes and First-fruits before. Thirdly his
falsehood, in equalling alike the precept of Tything to the
 Priest, with that of selling all, & giuing to the poore; wheras
 S. Hierome by way of fauour remits therein *totum pro parte*,
 but requireth for the Priest *debitum*; which before he said was

lib. 1. de clericis
cap. 26.

Tythes and First fruits. Nay chiefly his falshood, in omitting the words following, *Quod qui non fecerit Deum fraudare & supplantare conuincitur*, Which he that doth not, is conuincid to defraud and cozen God. Vpon which let Him heare *Bel-larmine* our aduersarie in this cause also, (whose authoritie twice hee nameth) *Etsi B. Hieronymus dicat esse præceptum, vendere omnia & dare pauperibus, intelligit esse præceptum, non absolute sicut de soluendis decimis, sed si quis perfectius esse velit. Nam de isto subdit, quod si facere nolumus &c. De decimis autem dicit, Quod qui non fecerit Deum fraudare & supplantare conuincitur.* Although *S^t. Hierome* say, it is a præcept to sell all and giue to the poore, yet hee vnderstands not the præcept so absolutely, as that of Tythe paying, but vpon suppo- fall of desire of perfection. For of that he saith, *which if we will not doe &c.* But of Tythes he saith, that he that doth not that, is conuincid to defraud and cozen God. But for con- clusion of *S^t. Hierome*, is it not strange, that his *non solum*, his præcept of not Tythes onely but all; should bee vsed, to in- ferre that not Tythes at all are commanded?

S^t. Hieromes authoritie therefore is certaine : and if wee conceiue how hee was *the interpreter of Origens former Testimonie*, wee may better beleue his opinion for the due- nesse.

Pag. 56.

The authoritie of *S^t. Chrysostome Hom. 43. Epist. 1. ad Co- rinthios*, is diuerted by the same shift, in that he speaketh not determinately for the *Quota*.

Animad. 14.

Yet though in that place, it be not determinately for the Tythe, yet is it for the more by perswasion, or at least for Tythe, in opinion : How may not his authoritie then, heere and elsewhere bee a Testimonie for his opinion of Tythes due, whereas he pleaded, *duety for more*, but leaueth *no liber- tie for a lower proportion*? I feare they will not follow his perswasion for the greater portion to be giuen, who will not admit his opinion for the lesse, but rather would take away all. But let *Cassians Abbot* determine this, *Non ab us decima- rum exiguitas mutilatur, quia omnia sua pariter Domino obtu- lerunt.*

Collat. 21. cap.
29

lerunt ; The small proportion of Tythes is not paired by those who giue all.

The authoritie of St. *Gregorie the Great*, though admitted, in the booke, for the right of Tythes ; yet in the Reuiew, his comparison of the Tythe of *Dayes in Lent* is counted slight, and nothing to the purpose: which He prooueth, not onely by the abused libertie of calculation of, but also by the various custome of both East and West Churches in the times of fasting, some more, some lesse: and thereupon the Canonists are reprehended.

Pag. 57.
Reuiew pag.
467.

But hee might as well haue reprehended his Holy Abbot *John in Cassian*, where he is euen curious in answering His obiections both of the Calculation and diuers vse; And the 8. *Toletan Councell*. And before these, St. *Dorotheus Abbas*, and others before the Canonists; yet in this I define nothing, but onely point out *Cassians Abbot*, to answere his reasons.

Animad. 15.
Collat. 21.
Cap. 25, 27, 28.
Can. 9.
In doctrina 15.

Concerning *Positive Lawes*, first Pontificiall and Synodal, although he acknowledgeth but one Councell, and that the 2. at *Mascon*, Can. 5. which Councell (saith he) hath no small testimonie, as well of ancient practise in paying of Tythes, as great opinion of their being due: Yet hee excepteth against it, as being supposititious: First, because not receiued into any olde Code of the Canons in any of the ancient Compilers, though in *Isidore*, which is the fullst, some other Synods of the Continent of France are, as of Orleans, of Arles, of Agatha. Secondly, because *Frier Crabb* was the first publisher. Thirdly, as pag. 65. because *Agobardus* saith, *Iam vero de donandis rebus, & ordinandis Ecclesiis, nihil unquam in Synodis constitutum est, nihil à sanctis Patribus publicè predicatum*: Now concerning the giuing of goods, and ordering or endowing Churches, nothing hath bene decreed in Councils, nothing hath bene promulgated by the holy Fathers.

P. 57. &c.

P. 58.

P. 65.

The first reason is very peremptory, and at once infringeth many worthy French Councils, which yet are not in *Isidors* Code of Councils, to repeat them all, were needlesse; they

are obuious to euery one that turneth ouer the Councils. But obserue my *coniecture*, why they were not compiled by *Isidore*: It was, as I suppose, for the *noveltie* of them; this last of *Mascon* being euen in his time, but two yeeres before he was *Bishop of Siuill*: And therefore as yet, hauing not got authority to be receiued into publique esteeme, especially in other kingdomes, and that other was not long before. Now since they happened not before the time of that most diligent Father *Isidore*, none after (that I know) euer collected the whole bodies, vntil that laborious Frier *Peter Crabb* endeuoured it. The rest, as *Burchard*, *Gratian*, *Iuo*, contented themselves with scattered Canons out of them, which they distributed into seuerall heads. No reason therefore, that the *negative exception* should bee allowed; which, although in none but the *booke of God*, and that in things necessary to saluation, can haue a *necessary consequence*, yet in this hath *no probability*. And the first publishing of it by *Peter Crabb*, needs not take away from the authority thereof. Reade *Binnius* his notes vpon this Councell, where by other authority he prooueth this to be authenticke.

As for *Agobardus* words, they are *vnadvisedly*, if not *crafitly* mistaken. That learned writer speaking there onely of *Generall Councils*, such as that of *Mascon*, *is not*, and those euen in opposition to the *Canones Gallicani*, (as he calleth them in the former page) of which sort that of *Mascon* is: Which also may appeare directly by the whole passage before in that Authour; where hauing prooued the vnlawfulnesse of Lay mens deteining Church Reuenues, and out of the Canons hauing exprest the maner of *diuision of them*, and to whom the right of *custodie* did belong, He adds; *De quare, si quis diligentius vult agnoscere, quid vel in quibus Conciliis dicatur, legendo, & reuoluendo cognoscat: Verum quia sunt, qui Gallicos Canones, aut aliarum regionum, putent non recipiendos, eo quod Legati Romani, seu Imperatoris, in eorum constitutione non interfuerint*: Concerning which, he that desireth more exactly to vnderstand, by reading hee may know what is written,

ten, and in what Councils : But because there are some, who thinke the Councils of France, and of other countreys, are not to be receiued, because the Popes or Emperours Legate was not present at the making of them; Councils therefore there were that might enforme, if they would take *Canones Gallicanos, aut aliarum regionum*; whose authority can bee no more be excepted against, saith he, then the authoritie of *Cyprian, Athanasius, &c.* whose workes were written without the presence of the Legates, either of Pope or Emperor: Proceeding therefore in defence of *Provinciall Councils*, which were commanded both by Popes of Rome, and by *magna Concilia* euery yeere to be celebrated, his counsell is, *Rectius profecto facere videtur, qui ubicunque magnarum Synodorum Statuta deficiunt propter insuetas emergentes causas, Antiquorum Statuta, quæ merito reprehendenda non sunt, sequenda deliberat; quam qui ea quæ ipse sentit — eorum sensibus antepo-* nit. Hee seemes more to bee in the right opinion, who, where the Statutes of *Great Councils* faile, vpon seuerall vnusuall cases which happen; determineth to follow the Statutes of the ancient, which are not worthy to be reprehended: then hee who preferreth his owne sence, before their iudgement. And then resolving, that all the fathers in *provinciall Councils*, in what time or place soeuer they decreed, any thing *De rebus Ecclesiasticis tractandis conseruandisque*, did studie to agree with the authoritie of Scripture, and the Statutes of their predecessours: Then follow the wordes cited; *Iam vero de donandis rebus & ordinandis Ecclesiis nihil unquam in Synodis constitutum est, nihil a Sanctis patribus publice predicatum. Nulla enim compulit necessitas, feruente ubique religiosa deuotione, & amore illustrandi Ecclesias ultrò æstuante.* But now concerning the giuing of goods, and endowing Churches, nothing euer hath beene decreed in Councils, nothing publikely promulgate by the holy Fathers. For no necessitie required it, the religious deuotion, and loue of beautifying the Churches euery where abounding of their owne accord. All which being considered, I appeale, euen to the conscience

In his Preface. of the Author, or any other, whether those wordes may be a iust exception against the truth of the *Mascon Councell*, which was comprehended *inter Gallicanos Canones*, and *Antiquorum Statuta*. And heere by the way, let him also looke backe vpon his *protestation*, whether hee hath purposely omitted nothing that belonged vnto the Title, since euen in the next page. 277. are such quotations omitted, which in the Catalogue are comprehended, for the right, *De Iure Diuino*.

P. 59. *Iuo* is reformed by a Ms. howloeuver his wordes are acknowledged to be *Leo* the fourths, not much out of this second 400. yeeres.

P. 60. *Iuo* is againe corrected for naming Tithes in the first Councell at *Orleans*. Can. 13. whereas *Iuo* in his *Manuscript* citeth it not, from any councell of *Orleans*, but some out of *Toledo*, whereof yet none expresly mentioneth Tythes.

Animad. 16. Let him view the fourth *Toletan Councell* cap. 32. and there he shall find the word *Decimas*, as both *Carranza* and the *Venice Edition* read it, besides *Binnius*. Yet himselfe, to other purpose, citeth that same addition of *Iuo* to this Canon, pag. 82. vnder the name of the first of *Orleans*. Can. 13. But before *Iuo*, *Anselmus Lucensis* in his *Collectanies*, receiueth the same wordes, and referreth them to a councell at *Toledo*, and there citeth also a Canon *ex Concilio Agrippiensi* relating the same of *Toledo*, which yet hath reference to former Councels, *iuxta Priorum auctoritatem conciliorum*. According to the authoritie of former Councells.

Biblioth. Vet. patrum, Edit. 7^{te}. Tom. 11.

P. 61. The Councell *Spalense Anno 610.* reiected: The exception is, because the Councell of the same yeere and place hath no such Canon, and is whole in diuers Editions, as it was certified by eight Bishops. And the beginning of this Canon is nothing but the syllables of one of Charlemaines lawes; *Unicuique Ecclesie mansus integer absque ullo seruitio attribuatur*.

Animad. 17. The first exception (though ill dated by the Printers fault; for it should be DXC. not DCX. the Numerall X being misplaced) yet is to *peremptorie*, since thereby many other Canons cited by *Gratian*, *Burchard*, and *Iuo*, would want both
time

time and place to be excerpted out of this Council at *Sinuil*, as are by *Garſias* in *Binnius* collected. *Garſias* ſuppoſeth the former Council of that yeere 590. which is extant, to be onely an Epistle to *Pegaſius* Biſhop of *Aſtigitanus*, and that the Council wholly is not extant: Then why may not this and the reſt, be *Fragments* thereof, ſince ſo collected by *Iuo*? For as for the ſecond Exception, himſelfe hath next before obſerved, how *Iuo* had ioyned together Canons of diuers times, as of *Gelaſius* and *Leo* the 4. And ſo in this it is likely, that that Preface out of the Lawes of *Charlemain*, might bee annexed to the true Canon of that Council *Spalenſe*; there being little dependance of the Canon, on that Lawe of *Charles*. Heere I can but coniecture to free *Iuo* and the Council.

Iuo and *Burchard* out of the firſt Council at *Orleans*, and the Pag. 63.
9. at *Toledo*. *Gratian* in c. 16. q. 1. cap. 5. in *Canonibus*, out of the Council of *Gangra*. The Council at *Tribur*. cap. 13. & 14. out of *Gelaſius*. Decree, cap. 29. and the Council of *Chalcedon*, Can. 17. They apply the ſeueral Canons to Tythes, as if theſe former Councils at firſt were made ſpecially and by name for them, whereas the matter is plainly otherwiſe: what was ordained in them about Oblations, is out of them by theſe (*Tythes* and Oblations being then ſuppoſed of equall right) expreſſely extended to Tythes.

Surely this is a ſtrange iniurie, to conclude the particular out of the generall, Tythes out of Oblations; which, that they were included in the intentions of thoſe prime Councils, is more to be beleued from the aſſertions of thoſe later, yet ancient Writers and Council, then from the vngrounded coniectures of the Author; who pag. 116. out of *Zonaras* ſeemeth to confeſſe Tythes to be meant in the Council of *Gangra*, and the 4. *Toletan*. can. 32. and that at *Paris*, ann. 829. hauing reference to former Councils, though naming Tythes, muſt haue the like blame with them. *Animal* 18.

The Prouinciall Council at *Friuli* anno 791. is put off by Pag. 74.
a trick, *It is rather a declaration by doctrine, then a conſtitution by precept*, ſaith hee.

Why?

Animad. 19.

Why? doeth he thinke it in conscience of lesse force, because of lesse formalitie? Is not a publike declaration of Gods precept to vs, with addition of his commination vpon the breach, not worthy to be accounted a *Constitution*, which is more; since a constitution is but a declaration of mans will, whereas this is the declaration of the will of the Councell in the word of God?

Pag. 64.

But reiecting these as *Prouinciall*, hee insulteth, that there was no generall Councell, and therefore citeth *Agobardus* to prooue it in the place before insisted on (whose reason for the want of generall Councels, if he had as well considered, as he doeth his authoritie of their want, hee needed not expect them) for saith *Agobardus*, *Nulla enim compulit necessitas feruente ubique religiosa deuotione, & amore illustrandi Ecclesias ultro astuante*, there was no neede.

Pag. 66.

Next he doeth inferre, that therefore to *Baptismall* and *Episcopall Churches* they were receiued as indefinite offerings; the quantitie whereof was wholly *Arbitrarie*, in respect of any *Constitution* or generall Law in vse.

Animad. 20.

But if he had conceiued the Law of God, grounding the generall perswasions of the Fathers, which were the rule of Canons; and obserued that they neuer admitted a lesse proportion, but expected a greater; and that euen in those Councels which were generally receiued, the phrases were *Oblationes fructuum vel Primitias Ecclesie debitas*; The offerings and First-fruits due vnto the Church, as *Concil. Gangrenf. Can. 7.* which is so vnderstood in *Sexta Synodo Romana sub Symmacho: De fructuum oblationibus quae Ministris Ecclesie debentur*, Of offerings of fruit which are due to the Ministers of the Church. *Ministeria debita— à subditis exigenda*; Due maintenance, to be exacted of the Subiects: and considered in the Capitularies which were through the Empire, *Ecclesie antiquitus constitutæ decimis non priuentur*; implying vpon *Constitutæ Ecclesie, soluendæ decimæ*, how should he say, they were wholly *Arbitrarie* for the quantitie, and that to a lesse proportion?

*Greg. M. Moral. l. 22. c. 23.**Photius*

Photius his Nomo-Canon. Tit. 5. and Cod. De Episcopis & Cler. leg. 39. are cited, wherein saith the Authour, He that offered not as all was compellable, but not he that offered a lesse quantitie, and compulsion was taken from the Churches authoritie in the Patriarchate of Constantinople.

In the authoritie of *Photius*, Titulo 6. (for in 5. there is nothing) there, such Bishops and Clergie that should excommunicate or detain the administration of Sacraments from those that brought not their fruits, *aut Angarias non praestent*, or do not their Service, or pay not their Taxes, although *consuetudine id inualuerit*, should forfeit ten pounds, besides deprivation; So that rather he should haue said, the authoritie of compulsion had beene taken from the Church, then that *the compulsion was taken from the Churches authoritie.* *Animad. 21.*

But why in that Canon should the quantitie be designed? since other first fruits besides Tythes being due, might bee comprised in the word *fructus*, by which they well vnderstood what more specially was signified. Moreouer, this compulsion, being so vnlawfull, might bee for some other imposed or voluntarie offerings of fruit, for which, to suffer excommunication to bee published, might prooue scandalous, for so by the ioyning of *Angarias praestent*, it may seeme. For, that in the time of *Photius*, circa Annum 858. a Tenth was vsually paid, *Anastasius Abbas* who liued circa Annum 840. doth testifie, in his booke *contra Iudeos*, saying of *Abraham* his Tything to *Melchizedech*; *Decimas ei dedit, ut dare solent Laici Sacerdotibus*, He gaue Tythes to him, as Lay-men vse to doe to the Priests: and that constitution of compulsion was onely restrained to that *Patriarchate*, as the Canon importeth. *Vet. Pat. vlt. Edit tom. 8. pag. 333.*

As for the quotation of the *Codex*, there is no such matter, a needlesse quotation. *Animad. 22.*

The old *Aethiopian Masse* is also produced to shew it was a speciall bountie to offer so much as the Tenth, where a distinct prayer is for those, *Qui obtulerunt munera Sanctae, unica, quae est super omnes, Ecclesiae sacrificium scilicet primitiarum* No need of the Critike Forè in the Mar-

gent for so it
is read *Bibl.*
SS. Patrum
Edit. 2. tom. 6.
pag. 95.
Animad. 23.

mitiarum, decimarum, gratiarum actionis signum & monumen-
tum, Who haue offered the gift of the holy, onely vniuersall
Church, that is, the Sacrifice of First fruits and Tythes, in
signe and token of their thankes-giuing.

A strange interpretation, to inferre hence the *bountie*, not
duetie of paying Tythes, whereas in that it was a *prayer* of
the Church, nay called *Canon vniuersalis*, it was for a *common*
seruice, and so prooues a generall dutie and payment: and be-
cause it is but *gratiarum actionis signum & monumentum*, it
shewes the true end of paying Tythes, which might not be
neglected, namely, our thankes-giuing to God, and therein
a *common practise* for the common prayer. For I cannot be
perswaded, that in any *publike Liturgie*, any distinct prayer ei-
ther was or should be, for a particular sort of men, for doing
that whercunto they are not bound. And I thinke it a neces-
sarie conclusion, that since they are an argument of thankes-
giuing, they are due *De Iure Diuino*. And yet farther, if the
Masse had iudged it a speciall bountie, there should haue been
added some *Epithete of excesse* to their gratitude, since euery
lesse offering would deserue as much, as to bee accounted
barely a Testimonie of thankes-giuing.

But I pray thee, Reader, attend the words of the prayer,
Rogemus Omnipotentem Deum Patrem — pro ijs qui obtulerunt
munera Sancta, Vnica, quæ est super omnes Ecclesia, Sacrificium sc.
primitiarum, decimarum, gratiarum actionis signum & monu-
mentum: Seu autem quis multum obtulerit seu parum, aut secreto
seu palam, seu volens & non habens, omnium amplectatur volun-
tatem qui Cœlestem Spiritum donat; Let vs beseech Almightye
God the Father — for those who haue offered the gifts of
the holy, onely, vniuersall Church, to wit, the Sacrifice of
First-fruits, Tythes, as a signe and token of their thankes-
giuing: Whether any hath offered more or lesse, or secretly
or openly, or in will, though hee haue not; accept all their
good wills, thou that giuest the heauenly spirit. Obserue,
First, that Tythes are called *Munera Sancta, Vnica, quæ super*
omnes Ecclesia, the gifts of the vniuersall Church. Tithes
there-

therefore vniuersally giuen. Secondly, how they are called *Sacrificium*, a Sacrifice, a religious duetie to God. Thirdly, how the words *multum* or *parum*, *secretò* or *palam*, *volens* & *non habens*, must probably by cohærence with the former, haue reference to Tithes, which may be more or lesse, or nothing, according to the abilitie of the persons. These obseruations I haue added, since I perused the masse it selfe: By all which is plaine, how the Authour could not haue produced a more important authoritie against himselfe.

But lastly, the 2. Councell at Braccara, *cap. 6.* & *Toletan. 9.* P. 67. *cap. 1.* are alledged to prooue Tithes, so farre arbitrary consecrations, as that by the practise of some places (which agree enough with the right challenged in the succeeding ages touching investiture and arbitrary consecrations) the offerings were so in the Patrons disposition, that hee might assigne a certaintie to the Minister of his Church, and employ the rest at his pleasure.

As for the quotation out of the Councell of Toledo, *Can. 1.* there is no such thing, it is a needlesse quotation. *Animad. 24.*

For that of Braccara, the Canon is thus; *Placuit, si quis Basilicam non pro deuotione Fidei, sed pro quæstus cupiditate edificat, ut quicquid de oblatione populi colligitur, medium cum Clericis diuidat; eo quod Basilica in terra sua quæstus causa condiderit, (quod in aliquibus locis vsq; modo dicitur fieri.) Hoc ergo de cætero obseruari debet, ut nullus Episcoporum tam abominabili voto consentiat, nec Basilicam, quæ non pro Sanctorum patrocinio, sed magis sub tributaria conditione est condita, audeat consecrare:* Wee are pleased, that if any build a Church more for gaine then godlinesse, that he may diuide with the Priest the oblations of the people, because it is built in his land; which is said to be practised in some places at this time: From hencefoorth be it obserued, that no Bishop consent to so abominable a wish, nor dare to consecrate such a Church, which is not built to obtaine the patronage of the Saints, but to be vnder a tributary condition. *Animad. 25.*

The Authours interpretation hereof is false, for the Patrons portion was by composition with the Bishop, who conse-

crated the Church *upon that condition*; and therein did consent, and was forbidden thenceforth to consecrate: so that it was assigned to the Patron, and not by him, as also *Tit. de iure. Patron. c. praterea. Institutum ab Episcopo.*

Secondly, the fault of the Patron was euen *abominable*, not to be defended nor followed.

Thirdly, hence appeares the contrary to his intention: he would prooue there, offerings arbitrary in the quantitie: But the Patron here, who built the Church, *questus cupiditate*, for desire of gaine, sure could not thinke so, or else might well haue bene deceiued in his couetous desire: For suppose, they had not payed any set Tithe, but each had offered two mites, like the poore widow, it would haue prooued no gaine to build Churches, and that for halfe benefit; especially, if but ten households which may make a Parish, (as c. 10. q. 3. c. vñio. out of the 16. Councel of Toledo) may be supposed. Let him weigh this consideration; where also may be considered, how a great proportion of oblations must needs bee payd, since out of *halfe* the Priest must haue a competencie, which by all opinion and Law was allowed him.

*Edit. Venet.
Concil. tom. 3.
pag. 385.*

Animad. 26.

But if in such maner (as the parenthesis before inferres) Arbitrary consecrations, and inuestitures, claime to meddle with Church oblations; then euen before that time the Canons of the Apostles, *Can. 37. & 40. Concil. Gangrens. cap. 7. & 8. Antiochen. can. 24. & 25. Damasus. cap. 10. qu. 1. Hanc consuetudinem, Concil. 3. & 6. sub Symmacho. Agathense Can. 48. Aurelianense 1. Can. 16.* besides other, haue Anathematized them, who besides a Bishop and his officer, would dispose them: Which faintly he seemeth to acknowledge, saying; that *in this age also some Canons subiected all new built Churches to the Bishops gouernment, but were little obeyed*; and so he citeth but onely one, *Aurel. 1. Can. 13.*

Animad. 27.

The fault might seeme lesse, if but *one* Councell, and that *in opposition* to the rest, had said it. But may it please the Reader to search these quotations, ioyntly confessing the same truth, *Concil. Arausicanum, Anno 441. Can. 10. Ilerdense, An. 525. Can.*

Can. 3. Aurelianens. 4. Anno 547. Can. 7. Toletanum 3. Anno 589. Can. 19. Toletanum 4. Anno 643. Can. 32. & 34. and all these in the same 400. yeeres: And then the disobedience should be a terrour, and not an example of the like attempting, since so many holy Fathers haue accursed the Lay intermedlers in the goods or fabrick, in the Churches of their Diocesses.

ANIMADVERSIONS on the sixt Chapter.



O begin the Treatise of the third 400. yeeres, hee confelleth it to haue beene the generall opinion of the Church, that they are due, *De Iure Diuino*: but would haue this generall opinion interpreted warily, by the generall practise, cleerely allowed by the Clergie.

He might haue said wickedly, for that practise as himselfe confelleth, was disobedient both to the Canons of the Church pag. 67. and 71. and to the Lawes of the Empire pag. 70. and 136. and therefore not allowed cleerely as he boasteth. *Animad. 1.*

After the granting of ordinary payment, not onely out of deuotion but dutie from the beginning of these 400. yeeres, *Pag. 72.* Hee proceedeth to prooue Arbitrarie Consecrations, at which he saith, certaine phrases in Councells doe point: as *Decimationum prouentus prius Ecclesie assignatus*, The profit of Tything assigned to other Churches, as *Concil Mogunt. c. 16. q. 1. cap. 24. Locus ubi Decima fuerant antiquitus consecratae*, The place where Tythes were anciently paid. *Concil. Mesens. Circ. Ann. 890. cap. 2. Decima quae singulis dantur Ecclesiis. Mogunt. Circ. Ann. 846. cap. 10.* Tythes which are giuen to each Church.

Animad. 2.

But, first all those Canons are against *Arbitrarie Consecrations*, and secondly, the phrases doe not aime at them.

The first Canon is, *Si quis Laicus, vel Clericus, vel utriusque sexus persona, proprietatis suae bona, vel res alicubi dare delegauerit, Decimationum prouentum priori Ecclesiae legitime assignatum, inde abstrahere nullam habeat potestatem*, If any Lay or Clergie man, or of either sexe any, intend to giue his proper estate or goods to any place, let him haue no power to take away the profit of Tything anciently assigned to other Churchs: So, he might not giue his Tythes, though he might his land, by reason of *Parochiall* right. And for the phrase that this *legitime assignatum* was by the Bishop not Patron, obserue both reason and authoritie, euen for the phrase.

1. If the Bishop might only dispose of Church reuenue as before is proued; and specially of Tythes, as in *Concilio Ticinens. Ad Annum 855. In Sacris Canonibus praefixum est, ut Decimae iuxta Episcopi dispensationem distribuuntur: Quidam autem Laici qui vel in proprijs vel in Beneficijs suas habent Basilicas, contempta Episcopi dispositione, non ad Ecclesias ubi Baptismus, & praedicationem, & manus impositionem, & alia Christi Sacramenta percipiunt, decimas dant; Sed vel proprijs Basilicis, vel suis Clericis pro suo libitu tribuunt, Quod omnimodis Diuina legi & sacris Canonibus constat esse contrarium*. It is determined in the holy Canons, that Tythes should be distributed according to the dispensation of the Bishop: But some Lay men, who either in their owne lands or Benefices haue Churches of their owne, neglecting the ordination of the Bishop, pay not Tythes to the Churches, where they are baptized, taught, confirmed, and haue other Sacraments, but pay them at their owne pleasure to their owne Churches or Clerkes: which manifestly is altogether against the law of God and the Canons. Nay the Councell of *Agatha An. 506. c. 22.* saith, *Rem Ecclesiae sicut permiserunt Episcopi teneant Ciuitatenses siue Diocesani presbyteri vel Clerici*, Let the citie or Diocesan Clergy haue the estate of the Church, as the Bishops haue granted or suffered: No lawfull assignation then, but by the Bishop.

2. The

2. The Bishop was interessed in a third or fourth part of Tythes in speciall, as *Concil. Toletan. 4. Can. 32. Iuxta priorum auctoritatem conciliorum, tam de oblationibus quam Decimis --- tertiam consequantur*, According to the authoritie of former Councils, both of Oblations and Tythes, let the Bishops haue the Thirds: And *Concil. Parisiens. ann. 829. lib. 1. cap. 31. Quamquam Canonica auctoritas doceat, ut quarta pars decimarum — in usus Episcoporum cedat*, Although Canonically teacheth, that the fourth part of Tythes — must belong to the Bishops. Nay these had right to all Tythes not assigned, as *Addit. ad Concil. Lateran. part. ultim. cap. 40.* How then might any Translation be without him?

3. Since the limits of Parishes were assigned by Bishops, *Ecclesiastica ordinatione Statuti*, as *Vrbanus* the third, *Tit. de Parochijs, cap. super eo.* why not the assignation of Tythes? *Videsis Grat. c. 13. q. 1.*

But the very phrase is in *Gratian. C. 16. q. 1. cap. plures baptismales, Ius ergo Ecclesiarum ita interpretandum est, ut nisi Episcopo disponente alijs Ecclesijs fuerit assignatum, &c.* The right of Churches therefore is so to be vnderstood, that vnlesse by the disposition of the Bishop it be assigned to other Churches, &c. Where the assignation in the Translation is. And *Alexand. 3. Addit. ad Concil. Lateranen. par. ult. cap. 40.* To the Bishop of *Brixia*, *Decimas retentas si infra certam alicuius Parochiam fuerint, eidem Ecclesie facias assignari*, Cause those Tythes which are withelde, if they be within a certaine Parish, to be assigned to that Church. And from the beginning, the Bishop, who as the common Treasurer, parted with the custodie of such Reuenue due to his Episcopall office, at the consecration of each Church, both receiued the Dowrie from the Patron, and assigned the seuerall circuit for the offering of oblations, and the hauing Church seruice.

The second Canon is out of the Council at *Meaulx*: The *Animad. 3.* words are, *cap. 2. Ideo statuimus ut deinceps nemo Seniorum de Ecclesia sua accipiat de decimis aliquam portionem, sed solummodo Sacerdos qui ibi loci seruit, ubi antiquitus decima fuerint consecrata,*

In Concil. in
Palatio Vern.
sub Pipin. ann.
755. and Capit.
lib. 5. cap. 230.
& lib. 6. c. 105.

Animad. 4.

Hincmarus in
oper. 55. capit.
cap. 1.
Lib. 1. cap. 7.

consecrata, Therefore wee decree, that from hencefoorth no Seigneur take any part of Tythes, but onely the Priest that serueth there where the Tythes were anciently consecrated. Here is no right of Translation by the Patron, much lesse of Consecration: But here indeed it is no more then anciently payed, *Antiquitus consecrata, Ecclesiis antiquitus constitutis*, as in the 4. Councell of *Arles* the Churches are called: It being therefore in the Bishops power, and not in the Patrons, to allow *Baptismall* Churches which had the right of Tithes. No arbitrarie consecration therefore can be inferred, which is opposed by the Canon, but onely forbidding of sacriledge, to take away what did anciently belong to such Churches.

The 3. Canon is in the Councell at *Mentz* vnder *Rabanus* the Archbishop, where the words are, *Volumus ut Decima qua singulis dantur Ecclesiis, per consulta Episcoporum & Presbyteris ad usus Ecclesie & pauperum summa diligentia dispensentur*: Wee will that the Tythes which are giuen to each Church, by the aduice of the Bishop, be disposed by the Priests with great diligence, to the vse of the Church and the poore: which is also before in *Concil. Turonens. 3. anno 813. Can. 16*. But that this giuing was not *voluntary* but *necessary*, the precedent Lawes both Spirituall and Temporall, may inferre; whereof one in this page sayth, *Per iustitiam debentur*, They are due of right: And that the Bishop had an interest in them, appears in the next Canon of the same Councell. And as for the *necessary* duety, hee confesseth it in the next words out of the Canon of *Leo* the 4. c. 16. q. 1. *De Monachis, cap. 45, & c. 56. & saepe in Capitularibus*. To which may be added the Councell *Meldens. c. 48. ut vici & Ecclesie Baptismales auctoritatem & privilegia debita retineant*; That the Parishes and Baptismal Churches may retaine their authority and due priuiledges: Nay, Tythes in speciall were so due, as no Tythes, no Seruice, and that *secundum antiquam consuetudinem*. Nay the Capitul. of *Charlemain* in the Edition of *Vitus* in his eleuenth yeere, hauing the same phrase, yet inioyneth a *necessitie*, *De Decimis ut dentur & dare nolentes — exigantur*,

exigantur, Of Tythes that may be giuen, and they that will not giue — may be inforced. The words of *Saluianus Massiliensis*, are here fit; *Si deuotus, da quasi tuum, si non deuotus, redde quasi non tuum* — *Ad opus Sancti & hortatione inuitaris, & exactione constringeris, Da si vis, Redde si non vis*; If thou be deuout, giue as if it were thine owne, if not deuout, restore as if not thine owne. To a holy worke thou art both exhorted and enforced; If thou art willing, then giue, if vnwilling, then restore.

Ad Cathol. Ecclesiam lib. 1.

But that such consecrations of Tythes, not established by a Ciuill Tythe made to the Church of another parish, were practised, and were in force, at the lay-owners choice, Hee prooueth plainly (as he saith) by a law (but not put in execution) for punishment of such consecrations: And the law is, *leg. Longobard. lib. 3. Tit. 3. c. 7. & in Ad tit. 4. ad capit. cap. 173.* The words are, *Quicumque decimam abstrahit de Ecclesia, ad quam per Iustitiam dari debet, & eam præsumptuose, vel propter munera, aut amicitiam, vel aliam quamlibet occasionem, ad aliam Ecclesiam dederit; à Comite vel à Misso nostro distringatur, vel eiusdem decimæ quantitatem cum sua lege restituat*; Whosoever taketh away Tythe from the Church to which of right it is due, and præsumptuously, either for reward, or loue, or other occasion shall giue them to another Church, let him bee distrained by our officer, or restore the Tythe with the forfeiture.

Pag. 72.

But that Hee is heere mistaken, himselfe will iudge if hee looke to the vnderstanding of this *Decima* by the *Capit. lib. 5. cap. 145.* cited before in the answer of the fift Reason in *Charles Martels* Storie: where hee shall finde this *Decima*, though a true Clergie Tythe (yet of Benefices and Infeodations alone) which were *per iustitiam debita*; And that such Translations of them were not in force, the word *præsumptuose* mee thinkes doth inferre. Neither could such Benefices haue had much practise of such translations, since they were euen so lately practised in *Pipins* Time, the Father of this *Charles*, whose Capitularie this is, for it is not *Lotharius*

Animad. 5.

his, as the former Capitularie can testifie.

Pag. 73.

Hee further would inferre it out of another prohibition against Parsons, who vnder paine of deprivation. capit. lib 7 cap. 141. were commanded not to perswade parishioners to come to their Churches, and to giue them their Tythes. And the like is in Synodo Ticinensi, c. 16. q. 1. c. in Sacris Canonibus, against such that vsed to giue away their Tythes, alijs Ecclesijs pro libitu.

Anim. id. 6.

First therefore, it appeares such practise was condemned and sentenced with deprivation; and iudged to be contrarie to the Canons and Gods Law, (Nay also with imprisonment, as Theodulphus Aurelianensis in his Epistle num. 14. doth declare, which is published with Hincmarus his Epistles by Busæus.)

De Regno Italiae lib. 6.

Concerning which, obserue the Law of Lambert the Emperour decreed in Concilio Mutinae, Anno 898. as Sigonius doth relate. *Si quis Sanctorum Patrum regulas contempserit, & gloriosissimorum Imperatorum Caroli, & Ludouici, atq; Lotharij, & Ludouici filij eius de decimis in eorum Capitularibus statutis & sancitis non obseruauerit, easque alibi nisi in Baptismalibus Ecclesijs absq; consensu Episcopi dare temptauerit, vel retinere praesumpserit, & qui dat ijs, & qui recipit eisdem constitutis percellatur;* If any shall despise the rules of holy Fathers, and not obserue the ordinance and statutes of the glorious Emperours, Charles, and Lewis, and Lotharius, and Lewis his sonne concerning Tythes in their Capitularies, and shall dare to pay them to any, but to the Baptismall Churches without consent of the Bishop, or shall praesume to retaine them, both he that giues, and hee that receiue them, shall vndergoe the same penaltie. Although therefore it might be a practise, yet sure not of many, since the reason was so bad, and not in force, because so condemned.

But yet in the First, that is the Capitular, Parochiall payment is praesupposed and prooued; so that there can be no consecration, though translation: for it seemes by this, they thought, that as Tithes in generall were due by distributive iustice, so in speciall, to this or that place, they must be paid by

by *commutative justice*, and therefore principally they forbade the solicitation to come to their Church, because from the partaking of their service, the performing of their Tithing to them would follow: which was prohibited, for that it proceeded out of a covetous and iniurious minde to gaine by others losse. As also in *Concil. Cabilon. sub Carolo Magno, Can. 6. & 7.* Those Priests are condemned, who out of covetousness, would perswade Lay men, *Vt abrenunciantes seculo — res suas Ecclesie conferant*: That they would forsake the world, and giue their estate to the Church. This Canon therefore, as some other constitutions, forbade the admitting of them to their Church. The *Capitularie, libr. 1. cap. 143.* Not to admit any but their owne Parishioners, vnlesse journeying, or following suits of Law. And in the same booke, *cap. 154.* That none shal sing Masse before, or receiue Tithes of a stranger. Nay, in *Concilio Nannetensi, C 1.* to enquire if any stranger bee in the Church at Service, and cast him out. By which I am perswaded, their care was to preuent the stragling humour of some then *Puritane conceipt*, (whose persons and contributions are not at their owne Churches) that so thereby the Parochiall profit or credit might not bee diminished. *Ne occasio tribuatur euagandi, & Diuina extra Parrochiam audiendi*, say the Canonists: Lest occasion might bee afforded of wandering or hearing Service out of their owne Parish.

And in the Second, the Councell of *Pauie*, it appeareth manifestly, that the *Bishops disposition* of them was before, though *contemned* by such irregular vngodly people. And they were but *Quidam* whom the Councell censureth so sharply, and desireth the secular Magistrate to correct them. Small force therefore in such gites, which were so condemned.

But next, he proceedeth to examples of such consecrations out of *Manuscript Chartularies in Thesauro Cottoniano*; and first out of those of *Vtrecht*, in the time of the elder Pipin, Charles Martell, Carloman,

Animad. 7.
The Canon
is repeated *ad*
pag. 72.

Animad. 8.

Where note, in their time were Tithes, yet such Tithes, as if I vnderstand them rightly, are not *De iure*, but indeed voluntarily vouchsafed, namely a Tenth of the *Kings Custome in Slaues, in Lands, in Tolles, in Merchandize*, or any such things; *Vndecunque ad partem Regiam, fiscus Teloneum exigere, aut accipere videatur*: From whatsoeuer the Kings Exchequer, for his part may seeme to receiue or exact tollage. If this be not the sence, I professe my ignorance; but otherwise, sure it had allowance to the Bishop, who might giue authoritie, and would, for the benefit of his Church, to *translate* them; or if Christianitie there then beganne, to receiue the profit of them.

The next consecration in the same *Chartularie* is in the promise made to the Bishop by one *Gutha* to endow a Church which he gaue to *Vtrecht*, with the Tithes of diuers Mannours; *In Beuorhem tradidit Gutha Ecclesiam necdum consecratam in ius & Dominium Sti. Martini*; (To that Saint was the Church of *Vtrecht* consecrated,) *ea videlicet ratione, ut post consecrationem eiusdem Ecclesie, Decimæ darentur ad supra nominatam Ecclesiam, de vill. his nominibus vocitatis, Beuorhem, Gislehem, Hegginghem, Schupildhem*: In Beuorhem *Gutha* deliuered a Church not yet consecrated, into the possession of Saint *Martins*, on that condition, that after the consecration thereof, such Tithes of such villages might bee giuen to the foresaid Church, &c.

Animad. 9.

These words cannot beare the sence which hee giues, but plainly crosse his intention, acknowledging the authoritie, not of *him*, but the *Bishop*, to assigne seuerall Tithings to each Church. For he giues the Church, *Ea videlicet ratione*, vpon that condition, *ut darentur*, That there might bee giuen, not by him, but by the Bishop, such Tithing, to countenance his gittes: But if any should vnderstand it otherwise, yet hence obserue, vpon consecration an endowment of Tithes doeth follow; and that it was to a Bishop in his owne Diocesse, who no doubt consented.

The *Canons* of this age were, that neither Patrons might giue,

C. 6. No conueyance of Tythes without the Bishop. 101

giue, nor Monasteries receiue any such Tythes, without the consent of the Bishop, *So Mogunt. Conc. sub Rabano, Ecclesie Can. 11. an. 834. antiquitus constituta nec decimis nec alijs possessionibus pro nouis Oratorijs sine consensu & Consilio Episcopali priuentur.* Churches anciently endowed, let them not be depriued of Tythes and other possessions, without the consent or aduice of the Bishop. And the same Councell Can. 14. *Nullus Monachorum parochias Ecclesiarum recipere praesumat sine consensu Episcopi,* Let no Monke dare to receiue Parish Churches, without consent of the Bishop: As after in the Councell of Lateran vnder *Alexander 3.* And in *Gratian:* and such was the condition of *Iuo.* concerning the Monkes their receiuing of them; And the Titles whereby they enioyed them, were *vel proprijs Episcopi licentia, vel Apostolica sedis autoritate,* as *Paschal. 2. 16 q 1 c. peruenit.* And so *Gregorie the 7. Vt nullus Abbas Decimas & primitias & reliqua quae secundum Statuta Canonum ad Episcopos pertinent, decinent, sine autoritate Rom. Pontificis vel Episcopi in cuius Diocesi habitat, Apostolica autoritate firmamus,* We command by Apostolike authoritie; That no Abbot detain Tythes or first Fruits and such things, which by the Canons belong to the ordering of the Bishop, without the authoritie of the Pope or Bishop of the Diocese:

Cap. 9.

Addit. ad Conc.

Later. sub Alex.

3. part. 13. c. 14.

C. 16 q 1. Plures

Baptismales,

Epist. 192.

By which, the next two consecrations of Tythes in *Banno ville Anno 852. & 946.* to Monasteries may bee knowne not to be Arbitrarie, but by the consent of the Bishop (which by the vse of the times I onely coniecture, because I see not the *Chartularies*) and not of newly consecrated, but infeodate Tythes, because the words are *Decimis quas habemus—quas habeo,* shewing a former enioying: and obserue it is not *de Terris quas habeo,* The Tythes which I haue out of my lands in such a place, but simply: as after in the yeere 1120. *Lewis* king of France, gaue a Church to the Church of *S. Dennis*, in these words, *Ecclesias de Cergiaco sicut libere possidebamus cum Decimis & omnibus ad Ecclesiam pertinentibus Ecclesiae restituyendo ipsis Sanctis Martyribus contulimus,* We gaue that Church which

Animad. 102.

we did freely possesse, restoring it to the Church, *Quercetan in Abelard. pag. 1165.* And to giue consent, that Bishops were much inclineable, nay in the third Toletan Councell, It was permitted. *Can. 3. & 4. That maintenance from the Church, might bee allowed to Monasteries:* Yet so, *Quod utilitatem non grauet Ecclesie*, That it may not bee burdensome, to the profit of the Church: And euen, that a parish Church might bee graunted to make a Monasterie.

P. 75.

But what I coniectured of the two former, is expressed in the next, which may shew the manner of such giftes. *Lewis the fourth, Anno 939. granting to the Monkes of Clugny Tythes, Decimas indominicatas, &c.*

Animad. 11.

But within nine yeeres, there was a confirmation from Pope *Agapetus* the second, and after from *Lucius* the second, in whose time *Adhemar* the Bishop of *Xantoigne*, did by the wordes *Damus* and *Concedimus*, wee giue and graunt, confirme the same; and challenged an authoritie to command, that none should within the precinct of that Abbey conueigh their Tythes to other Churches. But that is most sufficient, that in that very Charter of *Lewis* the fourth, in the very next words, There is concerning Churches and Tithes, this added. *Sicut per priuilegium Romanorum, & per scripta Episcoporum, adquisierunt, teneant & possideant:* As by the priuledge of the Popes and writings of Bishops they haue purchased, let them hold and enioy. These shew this grant to be only a confirmation, and not a prime Donation: The original conueyance being from Popes and Bishops: which also the venerable Abbot of that order, *Peter*, saith, *Ecclesias & earum vniuersa bona, ab Episcopis, absque uenalitate nobis collata libere, iuste, Canonice possidemus:* (An obseruable example of iustification of the right of their enioying) *Churches and all the goods thereof, wee doe freely, iustly, and Canonically holde collated to vs by Bishops without Simonie.*

Lib. 1. Ep. 28.
circa medium.

The next is in the Abbey of *Vendosme*, of the Tythe of *Salt-pits*; the like whereof the Abbey had out of the same lands of the Bishop

Bishop of Xantoigne, which although for 60. yeeres they had enjoyed, yet the Bishop upon the opinion, that no Church lands were to pay Tythes to any Church would haue withheld; but the Abbot Goffridus Vindocinensis pleads Parochiall right; and his words are confessed to shew a generall practise of such payment.

By which, in regard it was of the Bishops land, the Author is straitened in this *Dilemma*: Either the Bishop gaue them, and so consented, which was the Canonically dispensation; or did not consent, and so Parochiall right expected not a Donors consecration? Both which, crosse his opinion: And yet for these, besides that of *Callixtus*, the priuiledge of *Urban* is produced; as also those of the *Bishops predecessours* who gaue them. *Animad. 12.*

Another consecration hee alledgeth, *Anno 1124. And in* *Pag. 77.*
stead of all others, which no doubt were most frequent, a confirmation of severall Tythes in Innocent the 3. with reference to *Epist. lib. 2.*
many other quotations. *p. 435.*

But all these were by consent and confirmation of Bishops or Popes, for else of themselves they could not bestow them, as the same *Innocent* speakes *c. Dudum Extr. de Decimis*, speaking of Tythes, *Donatores non conferre potuerunt alijs quæ ipsi de iure nõ poterant possidere*, The Donors could not bestow on others what they themselves could not lawfully enioy. *Animad. 13.*

But *Innocent the 3. in Serm. 3. de Dedicat. Templi. Tom 1. Pag. 78.*
p. 83. saith it, where he doeth reprehend such consecrations, which were very common and allowed in fact by the Pope and Ordinaries, as saith the Author.

In that Sermon of *Innocent the 3.* he will needs interpret *Indigentibus*, to signifie in that place *Monkes*; as if *Innocent* had pointed at the custome of consecration to Monasteries. The words are, *Grauius peccant qui Decimas & Primitias non reddunt Sacerdotibus, sed eas pro voluntate sua distribuunt indigentibus*: They grieuously sinne, who render not Tythes and First-fruits to the Priests, but distribute them as they list to the poore. *Animad. 14.*

Now

Tom. 2. Epistol.
larum. lib. 2.
pag. 483.

Extr. de Deci-
mis. c. Tu nobis.

Now, that this word must signifie, not the Monks (though sometimes they were called *pauperes*) is evident, both by the circumstance of the place, which each man that reades may perceiue: And by the phrases in this sentence, both where he saith, *Graviter peccant*, which because such consecrations were not yet in the Councell restrained by him, he could not well haue said: and againe, the word *distribuunt* doeth not fauour of consecrations, but of voluntary, though sacrilegious bestowing of it. Againe, the occasion of such reprehension surely was the same with that of his Decretall Epistle, cited pag. 144. of the Archbishopricke of *Matera*, where the lay-occupiers did vse to diuide their Tythes at their pleasure, and arbitrarily, one part to the Church, part to the poore, part to their kinred; where *poore* cannot signifie *Monkes*: Or with that other, where the complaint is, that some, *De portione Fructuum — partem decimæ separantes, eam Capellis suis, aut alijs Clericis, aut etiam pauperibus conferunt, vel in usus alios pro sua voluntate conuertunt*, Of the portion of their Fruits, seuering part of the Tythes, they bestow it vpon their Chappels, or their Clerkes, or on the poore, or at their pleasure conuert them to others vse: And these *poore* are not *Monkes*, why then the other? But lastly since *Monks* could not receiue Tythes at lay mens hand at the pleasure of them without consent of the Bishop, how can they bee thought grieuously to offend in giuing that to *Monks*, which *Monkes* could not receiue; as elsewhere out of the *Canons* is shewed? And by the way, hee that heere would haue *Indigentes* to signifie, not the *lay-poore*, but *Monkes*; before, pag. 46. in the *Testimonie* of *Iohn* the *Abbot* in *Cassian*, will haue *pauperes* onely to signifie, the *lay-poore*: Whereas *Monkes*, of whom some were in *Orders*, are there principally vnderstood, which besides the quotation of the *Law of Moses*, the very condition of his office, that hee was an *Abbot*, might insinuate.

But Hee proceeds and inferres, that from the opinion of these arbitrarie consecrations, such conceipt was of prescription thence, and

and that amongst great men of the Clergie, That Tythes of increase long payed by a familie were due, whither soever it was transplanted, as if the continuall payment, had so for ever bound it, that it might not pay them otherwise. This was the opinion of some Bishops in the Patriarchate of Grado as wee may see by the same Pope Innocent his reprehension of them. Decretal. Ep. lib. 1. pag. 83. and of others elsewhere also Extr. De paroch. cap. 5. significavit.

Heere, First, you see how He would prooue a right from what was reprehended, and that in the opinion of the time. *Animad. 15.*

And, Secondly, in the first quotation onely personall Tythes were claimed, not Tythes of prædiall increase.

Thirdly, the Antiquitie of their claime euen to Proauis, no newly created Tythes then.

And Fourthly, not out of bountie but duetie, for how else would they extorquere: All which Hee would willingly denie.

But the words are plaine, *Quia Patres eorum & Aui & Proauis decimas ipsis aliquando persoluerunt*, Because their Fathers and Grandfathers and Great-grandfathers sometimes payed them Tythes: Which phrase is after repeated; Now *persolvere* doth præsuppose *debitum* not *datum*, a necessarie payment, not arbitrarie consecration; whereupon they did ground their præscription, vpon which they so violently required and would haue extorted Tythes.

But the other quotation Extr. de Paroch. c. 5. significavit, *Animad. 16.* is wholly mistooke, being for Iurisdiction, not Tythes.

Next, Hee prooueth the practise of Arbitrarie consecrations, by the power they tooke of selling them, as by the phrase Redimere Decimas in diuers Capitulars and Synods, de Decimis quas populus dare non vult, nisi quolibet modo aut munere ab ijs redimantur, Concerning Tythes, which the people will not giue, vnlesse by some meanes or gift they may bee redeemed of them. *Pag. 79. Capit. lib. 5 cap. 49. Concil. Mogunt. c. 16. q. 7. c. 7. Leg. Longob. lib. 3. Tit. 3 cap. 8.*

Where, First, is a plaine reprehension, nay in all the quotations, besides the censure of the Church, and distresse of *Animad. 17.*
O the

the Magistrate, the appearing before the Emperour, was inioyned vpon contumacie; whereas yet for the Parson by consent of the Bishops for to sell them was lawfull, as *lib. 7. cap. 152.*

P. 3. q. 51. M. 6. Art. 4. And *Secondly*, these Tythes were *Infeodations*, and therefore being letten might be expected to be redeemed, as after he confelleth the phrase *Redimere*, to signifie in *Alensis*, and as in the Iustification of *Charles Martels* Historie I haue shewed.

Epist. 12. And *Thirdly*, hey must needs be vsurpations, præsupposing still a former possession in the Clergie, for so is the sense of *redimere*, not onely to purchase, but to redeeme what was lost or left: so in *Iuo* the phrase is vsed *Redimere — altaria*, when lay-men vpon the death of the Parson who demised Tythes vnto them, were faine *Redimere altaria*, To purchase the *Church Reuenue* againe: whereby the *Chimera of arbitrarie consecration* of Tythes, not already consecrated, which hereby, and from the former he would inferre, is annihilated.

But that they were before consecrated, euery authoritie prooueth, as we haue obserued in the particulars.

Num. 3. Of Appropriations. Pag. 80. Proceeding to shew how *lay-patrons* did not onely arbitrarily consecrate Tythes, which were not before consecrated, but euen, in those that were, exercised a power of disposing by appropriation: He first proposeth, *the originall of parish Churches.*

And first, howe *Metropoliticke Sees, Patriarchats, Exarchats* (in the Easterne Church) and *Bishopricks* were limited, wherein his coniectures are in my vnderstanding true; as also in that he saith, that *Bishopricks* were anciently called *Parochia*, which terme was after confined to what our common language restraines: The Curates of which were appointed and sent by the Bishop, and receiued in their seuerall Parishes the offerings of deuout Christians, which were disposed of by the *Oeconomi* Deacons, or other Officers thereto appointed vnder the Bishop (but by the Bishop) wherein at first

first, they had no such particular interell, but that either a *quadripartite* diuision, as in the *Roman Diocese*, To the *Clergie Poore, Reparation of Churches and Bishop*: or *tripartite* or other diuision, as elsewhere, was made; which *Curates* were protected by some appointed by the *State* for *Endowes* and *Defensores*: So farre it seemes to mee not improbable.

But when hee talketh of *Churches erected onely vpon the lands wherewith Bishopricks were endowed*, because hee cannot denie that the Bishop did then alone ordaine Incumbents in euery of them, and that for space of five hundred yeeres, as if there were no *Lay foundations*: P. 81.

This sure is not probable, nay by the Councell *Arausicanum* Anno 441. is proued false, *Quod si etiam secularium quicumque edificauerit Ecclesiam*, But if also any Lay-man shall build a Church &c. and *Concil. Chalcedon.* So that no question, *Parish Oratories* and Churches of Lay foundations were before that time, and might be vnderstood by Pope *Denis* the first his *Decretall*: Although both in that time, and long after, the only *Collation* of such parish Churches, and *election* of the *Incumbents* wholly belonged to the *Diocesan Bishops*; at leastwise their *approbation*: Animad. 18.
Cap. 10.
Can. 4.
Videsis Siden.
Apollin. de Sim-
plicio, lib. 7. ep. 9

Neither at any time the *Patron* might collate as the Bishop had done, which next He proposeth.

The Councell of *Laodicea* saith it, *Non permittendum populo eligere*: The people may not be suffered to elect. The forenamed *Concilium Arausicanum* is very direct against all, be he Bishop or Lay that buildeth a Church, the Chapleine to be allowed by the Bishop of the Diocesse; And after the 500. yeeres, *Concilium Aurelian. 4. Ann. 547. Vt in Oratorij, Domini prediorum minime contra votum Episcopi ad quem Territorij ipsius priuilegium noscitur pertinere, peregrinos Clericos intromittant, nisi forsitan quos probatos, ibidem districtio Pontificis obseruare preceperat*: That in their Oratories the Lords of the Mannours bring not in thither strange Clerkes, against the minde of the Bishop, to whom the priuiledge of that *Territorie* is knowen to belong, but such as the Bishop vpon examination Can. 13.
Can. 10.
Can. 7.

- Can. 25. & 26. mination, hath commanded to serue there, *Toletanum* 3. They enioyne *Presbyteris in Parochiis ordinandis, ut habeant libellum officialem, & faciant professionem Episcopo*: Priests to be admitted to Parishes, that they haue a booke to direct them in discharging their office, and that they doe make profession to the Bishop. But after, in *Concil. Toletan. 9.* for the Bishops pride, or negligence, in suffering the ruines of the Parish Churches, it was then permitted to the founders, for their life time, *Vt Rectores idoneos ydem ipsi offerant Episcopis ordinandos: Quod si tales forte non inueniantur ab ijs, tunc quos Episcopus loci probauerit, Deo placitos sacris cultibus instituat, cum eorum conniuentia seruituros*: That they offer fit Rectors to be instituted by the Bishops: but if such be not found by them, then let the Bishop institute those who are worthy to serue there, by the consent of the Patron. Long before this was that Constitution by *Iustinian*; *Si quis Oratorium exstruxerit, volueritque in eo promoueri Clericos, vel ipse, vel heredes eius, si sumptus ipsi Clericis subministrent, & dignos nominauerint, nominati ordinantur; Si vero qui ab ipsis electi sunt, eos tanquam indignos ordinari sacri prohibebunt Canones, tunc locorum sacratissimus Episcopus eos quos præstantiores putauerit, promoueri curam agito*: If any build an Oratorie, and he or his heires would præferre Clerkes thereto, if hee will maintaine them, and present to the Bishop those which are worthy, let them be admitted: But if they that are chosen, are Canonically vnworthy, let then the Bishop of that place take care to preferre them whom he shall iudge to be more worthy. To these more might be added, which for the after-confutation, I reserue; whereby the right of Inuettitures by Patrons in Parish Churches in those dayes, is denied and the institution of the Bishop as vpon presentation is prooued.

Pag 83.

But he doeth confesse, that the Canons did ordeine, that euery Church, and the profits thereof should bee subiect to the Bishops disposition, as to the onely immediate Superiour; and doeth inferre, that the Patron should be utterly excluded from all interest, which is most true: Yet hee tells vs of diuers Lay Patrons
in

in those elder times, which had, or at least challenged in the oblations received from Christian devotion, an interest like to what the Bishops more anciently had in the offerings made at Churches, wherein hee onely placed the Ministers. And for this he citeth the second Councell at Braccara.

Where he that reades it wholly, shall finde no challenge of a Patron, but the consent and composition of a Bishop, indeed to an abominable desire: concerning which, see before, *Ad pag. 67.* *Animad. 19.*

Belides, he citeth the Epistle of Damasus, c. 10. q. 1 c. 15. where he calleth it a custome of the ancient times. But there Damasus speakes of Sacrilegious Lay men, not in particular of Patrons, not as challenging by foundations, which is his intention but by strong hand. *Animad. 20.*

After, he cites to prooue this, the 9. Councell of Toledo, *Can. 1.* (where he hath dealt fraudulently, in the citing of the words which make no such sence) for saith he, *And in the ninth Councell of Toledo about the yeere 660. Lay patrons are forbidden to use Iuris proprij potestatem in Church goods or lands, as if great pretence in those times had bin of their right in the disposition of them.* *P. 84.*

Now in the first Canon of the said Councell, for restraining of the Clergie from annexing the reuenue due by the founders dotation, to their owne inheritance or Sees: it is permitted to the heires and kindred of the founder of the Church to look to it, and if by admonition they cannot helpe it, then to proceede by accusation to the Bishop, and if he be guiltie, to the Metropolitan, & if in case he doe the like, to the King; *Ipsis tamen heredibus in eisdem rebus non liceat quasi iuris proprij potestatem preferre, &c.* Yet let it not bee lawfull for the heires to pretend as it were any right of proprietie, &c. *Animad. 21.*

If the *Quasi* had not been concealed, and the new libertie of their intermedling at all had bin considered, no great pretence in those times to haue bin of the right of Lay patrons in disposition of them would haue appeared. For they are not for-

bidden to uſe , but euen to pretend as it were any right, whereas before this they could haue no pretence, ſo much as to intermeddle.

Then, in generall he nameth, *Imperiall Capitularies*, but citeth none wherein he acknowledgeth, that diuers times prouiſion was made againſt ſuch Laie men, as thought it had been their right onely, to diſpoſe of the endowments and offerings of ſuch Churches, as they were patrons of, and that the Biſhop ſhould bee wholly excluded.

Animad. 22.

Concerning the offerings, this is falſe, no *Capitular* being againſt any ſuch challenge of offerings, though for the Endowment, the *Dos*, the Glebe, ſome patrons indeed might ſeeme to haue challenged it, as the *Capitulars lib. 7. cap. 213.* which he citeth alſo, & 368. doe inferre: where ſuch challenge, *Et in praterito diſplicet, & in futuro prohibetur*, Both for the preſent diſcontenteth vs, and for the future we forbid. And many Canons of that time haue the like, *Valentinum Gallie, c. 9. Wormatiens. c. 6. Colonienſ. An. 887. c. 4. Mogunt. 888. c. 4.*

So that all his quotations in reſpect of Tythes are falſe. In the firſt, no challenge of right, but compoſition. In the ſecond, no challenge of patron, but of any other *Sacrilegiouſ*. In the third, no challenge of Tythes or offerings, but of *Temporalties*.

P. 85.

But although this challenge of offerings was abſtained from, as the plainest part of *Sacriledge*, yet the intereſt of patronage, and a right of diſpoſition of the Temporall Endowments, which the Layfounders challenged in their new erected Churches, which was a right of Collation and Inueſtiture, whereby the Incumbent might receiue full poſſeſſion without aide of Biſhop or other Church man, could not bee ſo eaſily gotten from them; although ſome *Imperialls* were provided againſt it, and of them he citeth onely the *Capitular. lib. 7. cap. 213.*

Animad. 23.

But ſince vpon the conſecration of the Church, ſuch endowment was conſecrated by the Patron, and by his Charter deliuered vp to the Biſhop, together with the Subiection of the ſaid Church, as in the ſecond Councell of *Braccara* it appeareth

Can. 5.

peareth, where the words are, *Placuit ut quoties ab aliquo fidelium ad consecrandas Ecclesias Episcopi inuitantur, unusquisque Episcoporum meminerit, ut non prius dediceret Ecclesiam, nisi ante dotem Basilica & obsequium ipsius per donationem Chartula accipiat*; It is our will, that as oft as Bishops are inuited by any to consecrate Churches, that euery Bishop remember that he doe not consecrate the Church, before that hee receiue by Charter of the Founder, the dowrie and the subiection thereof; whereof also S. Gregorie speaketh, and *Concil. Aurelian. 4.* with others. Why then should they intermeddle in the disposition of them? well therefore did the Capitularies cited by him prouide against it, citing an olde Constitution: nor they onely, but the Councells before cited of that time. But as for patronage (which hee would confound with the disposition of Temporall Endowment) it being a right of nomination and preſentation, not onely to the *Temporall Endowment* heere spoken of, namely, the *Dos Ecclesie* giuen by the Founder, the *colonica Veſtita cum tribus Mancipijs*, as *Concilium Valentinum sub Lothario Imperat.* called it; But euen to the Tythes and Oblations also which hee would not distinguish) this was not by way of Inueſtiture and Collation either challenged or allowed: But they vsually presented their Clerkes to the Bishop, as in the *Councell* and *Nouell* fore cited. *Ad pag. 82.* they are commaunded, and the contrary offenders were ſeueraſſy cenſured. Which may also appeare by the Capitularie, *De Clericis Laicorum unde nonnulli eorum conqueri videntur, eo quod quidam Episcopi ad eorum preces, nolint in Ecclesiis suis eos, cum utiles sint, ordinare, visum nobis fuit, ut in utrisque partibus pax & concordia ſeruetur, & cum charitate & ratione utiles, & idonei eligantur; Et si Laicus Idoneum utilemque Clericum obtulerit, nulla qualibet occasione ab Episcopo sine certa ratione repellatur, & si reijciendus est propter scandalum vitandum, eidenti ratione manifestetur*: Concerning the Clerkes of Lay Patrons, many of them seeme to complaine that some Bishops at their entreaty, would not admit them, though worthy, into their owne Churches: It seemes

*Epist. lib. 12.
cap. 10.
Can. 33.*

Cap. 9.

Lib. 5. cap. 178.

Lib. I. cap. 22.

Pag. 311.

ſeemes good therefore to vs, that on both parts peace may be kept, and with loue and reaſon the profitable and fit may be choſen: And if the Lay-patron preſent a worthy Clerke, hee may not be repelled without good reaſon; and if he be to be repelled, for auoiding ſcandall, let the reaſon be euidently manifeſted: which is related in the *Councel at Paris*, an. 829. Is not this ordination the now-Inſtitution, not the Lay-Inueſtiture? Which they that did not obſerue, were cenſured in *Reſcript of Charlemain* in *Vitus* Edition: *Præſumption non modica, ita ut Presbyteros, nequiſſima temeritate præſentari Epifcopo denegatis, inſuper & aliorum Clericos uſurpare non pertimeſcitis; & abſque conſenſu Epifcopi in veſtras Eccleſias mittere audeatis*: It is no ſmall preſumption, that ye deny through moſt vngodly raſhneſſe, to preſent your Prieſts to the Biſhops, and that you farther feare not to take others Clerkes, and to dare to put them into your Churches: as alſo, in *Concil. Arelatenſ. ſub Carolo Mag. c. 4. Turonenſ. 3. ſub eodem, c. 15. Cahilonenſ. ſub eodem, c. 42. Moguntin. ſub eodem, cap. 29. Meldenſ. c. 51. & 52. Wormatienſ. cap. 8.* and ſome others before mentioned, wherein diuers cenſures are threatned againſt ſuch uſurpations: beſides, the *Acte of Vlrrique* after ſhe weth the uſe of theſe Times.

Pag. 85.

The Patron did take upon him the Aduocates and Defenſors office of the Church-title: So hee.

Animad. 24.

But as before, *Defenſores Eccleſiarum ab Imperatore fuerunt poſtulati*: The Emperours were requested to grant Aduocates for Biſhoprickes; as in many Councels; ſo at that time it appeares, that the Biſhop did not confirme onely, but commend the Aduocateſhip of the Church to the Patron: For ſo in the wordes of that *Anonymus* writer in the life of Saint *Vlrrique* Biſhop of *Auſpurg*, where (as the Author citeth) he ſaith, *Conſecratione peracta, doteq; contradita, comprobato illic Presbytero, Altaris procuracionem commendauit, & Eccleſie aduocationem firmiter legitimo heredi panno impoſito commendauit*: The conſecration being ended, and the Dowry deliuered vp to the Prieſt, whom he had there approoued, hee committed

Cap. 7.

Pag. 86.

the

the charge of the Altar, and conferred the Aduocation of the Church firmly on the lawfull heire, by putting on him a robe. An excellent patterne of the vse of theſe times, by which all the fabricke of this new Hiſtorians inuention of challenges is deſtroyed. If the Biſhop gaue the Dowry deliuered to him by the Patron, as afore; then why a challenge of the Patrons diſpoſing of that in the Church, which the Church had not by him? If he approoued the Prieſt, and committed the care of the Altar to him, then why a challenge of Inueſtitures? And if the Biſhop gaue the aduocation of the Church, why a challenge of taking it as without him? Heare *Hincmarus, Sancta Eccleſia per ſanctos Sacerdotes elegit ſibi in ſingulis Eccleſiis, Vicedominos, Aduocatos, Defenſores, & ceteros adiutores, &c.* Holy Church by holy Biſhops hath choſen her ſelfe in each Church, Vidames, Aduocates, Defenders, and other helpers.

In Dialog. de Statu Eccleſie p. 651.

But that they vſed ſuch Collation and Inueſtiture (*Inueſtiture being onely the giuing of Seisin and Poſſeſſion, as Iuo is cited for Epist. 41. & paſſim*) with theſe words, *Accipe Eccleſiam, Take the Church, or ſuch like, as P. Damianus lib. 1. epist. 13. Whereby without Inſtitution, the Incumbent, as really, uſually, and as immediatly receined the body of his Church, his Glebe, and Tythes, in point of Intereſt from the Patrons hands, as a Leſſee for life receiues his lands by the Leſſors livery: this next Hee intends to prooue.*

Pag. 86.

Yet in that parentheſis nothing almoſt is true, for neither that quotation of *Iuo* is true, though elſewhere in deed, hee grant *Inueſtiture* to be a granting. *Qua conſeſſio ſiue fiat manu ſiue nutu, ſiue lingua, ſiue virga, quid refert cum reges nihil ſe ſpirituale dare intendunt, ſed tantũ aut votis petentium annuere, vil- las Eccleſiaſticas, aut alia bona exteriora, (qua de Munificẽtia aut Regum obtinent Eccleſie ipſis Electis concedere.)* Which grãting, whether it be by hand, or becke, or tongue, or rod, what difference, ſince Kings intend not to giue that which is ſpirituall, but onely either conſent to others petitions or graunt to thoſe that are choſen, Church-Farmes, or other poſſeſ-
P ſion

Animad. 25. Ep. 60. & alibi.

Ep. 95.

Iuo Ep. 214.

sion which the Church hath by the bountie of Kings. Nay in another place saith, *Leges nequaquam appellant inuestituram concessionis, sed possessionis*, The Lawes doe not call it an Inuestiture of Concession, but of possession, which is lesse. But this Inuestiture is not such as Hee would claime; In this, the election beeing graunted to the Clergie; but hee without institution, nay allowance of the Bishop, would haue this Inuestiture of parish Churches; these therefore are not alike. Neither was that great quæstion (in which, *Scissum Regnum & Sacerdotium, quibus tanquam principalibus & fortioribus paxillis Tabernaculi Dei status firmiter figebatur*, The Kingdome and Priesthood were rent, vpon which as two principall props, the State of the Tabernacle was fixed) other then at first about the Inuestiture of Bishopricks and Abbeyes. Wherein, what through the challenge, *Iure Maiestatis & publicæ defensionis*, By the prærogative of Maiestie and publike defence: or, *Iure populi representati in Rege*, the right of the people represented in the King, which people formerly had interest in the choise of their spirituall Gouvernour: or, *ex concessione Paparum Leonis 3. & Adriani 1.* by the grant of Pope *Leo 3.* and *Adrian 1.* the Emperours claymed a right in the promotion and concession of such places, whereunto the Deuotion of their Auncestors had annexed great Temporall endowments: which, how mainly by the Popes it was opposed, and by most Writers (since forsooth for their labour *Saincted*) railed vpon and contradicted, the Stories are too full. Yet, how some others wisely præferring the peace of the Church before the priuiledge, willingly recciued the honours; and some euen publicely defended the right; the Historie of that time may testifie. But after, the contention grew concerning the Collation of parish Churches; especially in this kingdome, as the Epistles in the third booke, amongst those of *Anselmes*, of his owne and of others can witnesse, and many of *Ioannes Sarisburiensis*.

Animad. 26.

But to returne to the *Parenthesis*, as the quotation of *Iuo* was false, so that of *P. Damianus* for the quotation is true.

Yet

Yet in the same Epistle saith that authour, *Licet iniuste aliquo modo Ecclesias futuris rectoribus tradunt*, Although vniustly in a sort they giue the Churches to the Rectors that shall be, speaking of Lay Princes: whereby both the right in his opinion, by the word *Iniuste*, *vniustly*; and the denying of his *Aduerbe*, that the Incumbent did *fully receiue the interest*, is contradicted by *aliquo modo*, *in some sort*; because Ordination must follow vpon such title: In which the approbation of the Bishop was so necessary, that vpon Canonical exceptions, hee might hinder the capablenesse of such Lay Inuestiture; for therefore it must bee, *cum consensu Episcopi, ne malus existat*, with consent of the Bishop, lest he be naught.

C. Monast.
16. q. 7.

But whereas he compareth the conueiance, as from a Lessour, to a Lessee for life, by liuery:

P. 87.

I was perswaded, the common Law had accounted the estate of an *Incumbent* in his Cure, to be a *Fee simple*, and not like an estate by Lease, which vsually (I thinke) hath covenants, whereby vpon default, either the demise, or some penaltie may reuert to the Lessor. But howsoeuer, the *Glosse of the Canon Law* hath made the comparison otherwise, euen in the *C. Monasterium* before cited, (and after by him) where it saith, *Episcopus inuito Patrono, non potest de Ecclesia facere Monasterium—sic nec Dominus rei potest vsum rei immutare etiam in melius, inuito usufructuario*: The Bishop cannot make a Church to bee a Monasterie against the Patrons will, as a Landlord cannot change the propriety of any thing, though for the better, without consent of the Lessee. Where the Patron is compared to a Lessee.

Animad. 27.

To proceed, the vse of such Collations and Liueries, he striues to prooue by the phrase *Commendare, in some Capitulars, and in that former, Cap. Monasterium.*

In the Capitularie, the first quoted, *Libr. 5. cap. 83.* The words are, *Vt Laici omnino munera iniuste non exigant à Presbyteris, propter commendationem Ecclesie cuique Presbytero*: That Lay men doe not at all vniustly exact reward of Priests, for the commendation of the Church to any Priest. But hee

Animad. 28.

Lib. 5. c. 84.

that shall conceiue the very next *Capitul.* before, cannot suppose his sence, *Vt Laici Presbyteros non eiciant de Ecclesiis, neque constituent sine consensu Episcoporum suorum*: That Lay men eieſt not Priests out of the Churches; nor appoint any there without consent of their Bishops, where approbation and consent of the Bishop is required, and that very likely vpon præsentation of the person vnto him, as before out of another *Capitul.* in the same booke, and out of the Councell of *Paris* is noted: for being præsent to the Bishop, Institution without Canonically exception must ensue.

C. 178.

Animad. 29.

The next quotation, *Ad. 4. ad Capit. cap. 37.* is a needlesse quotation, not hauing so much as the word *Commendare*; and the Capitular doth fully crosse his opinion. *Multi contra Canonum constituta, sic Ecclesias quas edificarunt, postulant consecrari, ut dotem quam ei Ecclesie contulerint, conseant ad Episcopi ordinationem non pertinere, sed ea secundum constitutionem antiquam ad Episcopi ordinationem & potestatem pertineant*: Many against the Decrees of Canons, doe in such sort desire the Churches they built, to be consecrated; that the dowry which they haue bestowed on the Church, they suppose doeth not belong to the ordering of the Bishop: But according to an old Constitution, let them belong to the ordering and power of the Bishop.

Animad. 30.

The last Cap. *Monaster. c. 16. q. 7.* is against his opinion, *Licet illi Presbytero cui voluerit, pro sacro officio illius Diocesis, cum consensu Episcopi, ne malus existat, commendare*: Let him commend it to any Priest whom he will, with consent of the Bishop, lest he be naught: and as the Authour, *De vitis Pontificum*, attributed to *Luithprandus*, addeth to the Canon, *Ita ut ad placitam & iustam reuerentiam illius Episcopi obedienter Sacerdos recurrat*: So that he may obey his Ordinary. Where obserue, that although he bee *Presbyter* and *Sacerdos*, yet the consent of the Bishop is necessary.

In vita Leonis. 4.

Animad. 31.
Pag. 88.

By which is confuted his next passage, to prooue the Bishop to haue nothing to doe, but onely to order the Incumbent: For, saith he; *A Priest being first ordered, might after bee placed*

at the Patrons pleasure, to whom as to a Tenant he resigned: For which are cited, *Capit. lib. 6. c. 197. & lib. 7. c. 173.*

And yet he relates the old ceremonie of Ordination, wherein speciall expression was made of the Title of the Church, to which hee was then to bee promoted, and in which that he alwayes would remaine, hee made promise before his Ordination, as appeares by the *Capitularie, Lib. 5. c. 108. Presbyteri qui in Titulis consecrantur secundum Canones, antequam ordinentur, promissionem stabilitatis loci illius faciant*: Priests that are preferred to Titles, according to the Canons, before they be ordered, let them make promise of continuance in that place; which they that did not performe but went to other Churches, were excommunicate vntill they returned; and if another were instituted there before, he that had left his Church, *Sacerdotij vacabat dignitate*, was degraded, vntill his Successor died, as the second quotation *cap. lib. 7. c. 173.* doth declare. This being so heauie a censure, it is not likely there was any vse to the contrary. It was so odious a thing then, to leaue his first Church, that as *Papirius Mafonius* attributeth all that vnchristian vsage towards *Pope Formosus* by his successor, only for that hee first against the Canons, did leaue the Bishopricke of Portua for the Popedome, as in the life of *Formosus*: So to any that should bee a forsaker of his first Church, diuers censures were very grieuous, whereof although the Lay men might bee carelesse, yet the Clerkes neither durst nor were; none being receiued to other Diocesses, *sine literis commendatitijs*, without letters dimissory, and in the same Diocesse such were not suffered. And against them were the other Capitulars mentioned *lib. 5. cap. 26. 43. 82.* to which an infinite number of Canons (whereof some before are quoted) might bee added, which that they were little obeyed, sheweth little religious reuerence, and small authoritie, to countenance so strange an opinion concerning those times.

Lib. De Episcop. urbis in vita.

Page 89.

But secondly, he endeuoureth to prooue the vse of Collation in lay Patrons, for that the aduouson of the Church, descen-

P. 89.

ding in Coparcenerie the Church had as many Incumbents as Patrons, Singulæ Partes singulos habebant Presbyteros, Each part had a speciall Priest, each gining interest in a part, as in all other inheritance descended vnto them. For this *Addit. 3. ad capit. c. 25. & Concil. Lateran. sub. Alex. 3. cap. 17. & Appendix ad Idem Concil. p. 15. c. 7.* are quoted.

Animad. 32.

For the interpretation of the first of these quotations, That Capit. made in the 16. yeere of Charlemaines raigne, in *Vitus Edition. p. 323. inter Leges Longobard. lib. 3. tit. 1. cap. 44.* may giue some light, *De Ecclesiis qua inter heredes diuise sunt, consideratum est, quatenus si secundum prouidentiam & admonitionem Episcopi, ipsi coheredes eas voluerint tenere & honorare, faciant. Sin autem hac contradixerint, ut Episcopus potestatem teneat utrum eas ita consistere permittat aut reliquias inde auferat,* Concerning Churches which are diuided amongst heires, it is decreed, that if the coheires after the counsell and admonition of the Bishop will hold and honour it, let them doe it: But if they denie it, let the Bishop chuse, whether hee will permit it, or by taking away the reliques, vnhallo w the Church: which I vnderstand, if they will not present one, let it be at the Bishops choice, &c. But the Councell at Tribure better expresseth the case c. 32. *Quaecunque Ecclesia à compluribus coheredibus sit obfessa, concordī unanimitate undique procuratur, ne propter aliquas disceptationes seruitium Dei minuat, & cura populi inreligiose agatur: Si vero contingat pro ea participes dissidere, & sub vno Presbytero nolle eam procurare, & propterea iurgia & contentiones tam inter ipsos quā inter Clericos incipiant frequentare; — Episcopus tollat inde reliquias --- atque eiusdem Ecclesiae claudat Ostia, & sub sigillo consignet ea, ut Sacrum ministerium nullus celebret in ea, antequam concordī unanimitate vnum omnes eligant Presbyterum, qui seruiens scit Sacrosanctum locum procurare, & populo Dei utiliter praeesse. Hanc autem habeant auctoritatem Episcopi, ut in nullis Ecclesiis nec constituentur Presbyteri, nec expellantur illis inconsultis & non consentientibus.* What Church soeuer is incumbred by many coheires, by all meanes in peace & concord, let it be ordered, that
for

for any such debates the seruice of God be not diminished, and the care of the people bee not irreligiouly performed. If it happen the Copartners to disagree, and that they will not put one in it, and thereout brawles and contentions both betweene themselues and their Clerkes beginne to increase: Let the Bishop take away the reliques, and shut vp the doore of the Church and seale it, that none say seruice in it, before they be agreed ioyntly to choose one, who may discharge the seruice, and profitably be ouer the people of God. But let the Bishops haue that authoritie, that in no Churches, neither Priests be admitted, or from them be expelled, without the aduice and consent of the Bishop, &c. Out of which appeareth, the case to be tumultuarie, wherein the prouidence and admonition of the Bishop, was to be vsed to bring in one Priest Canonically, and that was by his *approbation*, as before: or his *authority to unballow the Church*, and seale vp the doores, whereby all the Patrons right might be euacuate for the present.

The other two quotations plainly may declare the vse of the former, and that to be euen quite contrary to his opinion: For both *c. 17. Lateran. sub Alex. 3.* doeth expresse the feuerall presentations to the Bishop, *Cum una Ecclesia unius debeat esse Rectoris pro sua defensione plurimos representent*, Whereas one Church should haue but one Incumbent, by reason of their Patronage they present many: Whereby his argument of Inuestiture is fallified, against which the whole Councell is most opposite.

And the other in the Addition *part. 15. cap. 7.* saith, *Episcopus inuestiuit*, The Bishop did inuest them, at the presentment of an Earle of *Hereford*: and that is not a case of Coparcenerie, but such as for case, A. marrying B. hath by B. the Patronage of the Church C. which Church by the Bishops consent is giuen to a Monasterie, B. being diuorced from A. is married to D. D. and B. would deuest the Monasterie, and interest the Parson without consent; nay D. dying, B. married to E. and would maintaine the Parsons right, and so vp-
on

on change of the Patrons, change the possessor. This case is not like, yet neither the Monasterie nor Parson were inter-
 celled by *Lay investiture*.

Animad. 35

From the Patronage, though no such challenge of Inue-
 stiture, it may be, those *Droits Honorifiques des Seigneurs es*
Esglises, as *precedences, seats, &c.* did proceede, as hee seemes
 to expresse them pag. 394. or from the olde infeodations.

Pag. 90.

But he. saith, *from Investiture came the custome remaining in*
diuers places, especially in France, whereby the Incumbent hath
not for himselfe above a small part of the Tythes, à Canonica
portio, at the arbitrarie disposition of some spirituall Patron, who
takes the rest to his owne use, and for this citeth Extr. Tit. de præ-
bendis, c. 30. & de iure patronatus cap. 25. & Sext. Tit. de Præ-
bendis, c. 1. suscepti.

Animad. 36.

But obserue the falshood of the Author; neither quota-
 tion of the Decretals mention or intend the claime of any
spirituall Patron; But in the first, *Extr. de Præbendis c. 30. Ex-*
tirpanda, from the reason of the Apostle, hee disprooues the
 custome, saying, *Consuetudine qualibet Episcopi, vel Patroni,*
vel cuiuslibet alterius non obstante, Any custome of Bishop or
 Patron, or of any other notwithstanding. Where *Episcopus*
 and *Patronus* are distinguished. And in the 2. *Extr. de iure*
patronatus cap. 23. præterea. That is absolutely of Lay-patrons
 or Aduocates, or Vidames, or Gardians, who are comman-
 ded, *ut nihil in ipsis Ecclesiis præter antiquos & moderatos reddi-*
tus à locorum Episcopis institutos exigèrent: That they should
 not exact from the Church any thing but the ancient mode-
 rate reuenue, instituted by the Ordinaries. Where obserue,
 that not by the patronage, but by allowance and ordination
 of the Ordinarie they had any right; with what confidence
 therefore are falsities produced?

But in deed in *sexto Tit. de Præb. c. suscepti*: There, some
 exempt Religious in their Approbations, which they had
 not *pleno iure*, but were presentable by them, what by the
 negligence of the Bishop, not requiring the assignation of a
 competencie at the Institution of the Clerke; as also through
 the

the couetousnesse of themselves, did assigne too insufficient meanes to their Curates. Wherefore *Clement* the 3. conceiuing, how by this meanes no worthy persons would accept such Cures to the damage of soules; hee doeth strictly decree and command, that neither their Exemption, nor any custome of any other religious Patrons notwithstanding, the Bishop should interpose his authoritie, to inforce the assignation of a competencie. This custome therefore, as condemned vpon such reason, did likely cease. But obserue, this to be in Appropriations, for as such the Religious had them; so that they were more then Patrons.

But, this he made his transition to denie the Bishops authoritie to dispose of all Tythes in these middle times, as *some falsely say* (although many Canons did) but *the practise of the time was contrarie*, saith hee.

In Tythes where Parochiall right was not settled, as also in Tythes *de Noualibus*, of new Improvements by culture not assigned, may appeare, *Addition. ad Concil. Later.* and himselte confesseth, for the practise, that they did belong to the Bishop; and no more did any Canons require for the absolute interest of the Bishop: but for the iurisdiction and necessarie consent in any voluntarie conueyance of them by any, the Canons were in generall as the practise: and the particular of the *Arch-bishop of Saltzburg* was of Tythes, which were not Parochially settled, as himselte afterward proueth, out of *Greg. 7. Regist. lib. 2. epist. 77.* So that therein he had authoritie to allot what part he would as *Ordinarie*, not as *Patron*. *Animad. 73.*
P. vlt. c. 40.

Concerning Inuestiture, hee addeth, that it was, not onely in bestowing parish Churches, but in Monasteries and Bishopricks the like was: but the increasing power of the Clergie tooke it away wholly in lesser Churches (sauing that in Collation of free Chapels, Prebends, or other Benefices, without parochiall Cure, according to the *Droit de Regale* of the Kings of England and France especially) and altered it in Bishopricks. *Pag. 91.*

That the Challenge of Inuestiture was in Bishopricks and Monasteries *Animad. 38.*

Monasteries, as well as pariſh Churches, is true, nay firſt and chiefly; for in thoſe times wherein was no Inueſtitures of pariſh Churches, the Popedome and Patriarchates by the conſent of the Emperour were diſpoſed; Nay in St. Grego- riestime (vntill Constantinus Pogonatus remitted it to Pope Agatho) there was money paide for the ordination of the Pope to the Emperours. And as for Biſhoprickes; in France, in the time of Agobardus, who pointeth at it, and Florus ad- ded to his workes, where they both reprehend the uſe.

Papyrius Maſ- ſon in Agatho- ne.

Pag 312.

Pag 417.

Ep. 3. & 4. &

8. & 21. & 91.

But Fulbertus he acknowledgeth it, *St. Wulſtans* Inueſti- ture by Edward the Confessor in England, is miraculous in *Matth. Paris*: And this *cuſtome*, without alteration that may impaire the prærogatiue of the King, euen ſtill continueth:

Ep. 282.

Ep. 52.

There præceded a *Congè de Eſlire*, whereof *St. Bernard* ſpea- keth before Election: and *Thomas Becket* amongst *Ioan. Sa- risburienſis* his Epistles, commands the Chapter, *Honeſta Le- gatione de Collegio veſtro tranſmiſſa, & præces ei deuotione de- bita porrigentes, ut Canonice eligendi vobis paſtorem, libertatem, concedat.* By ſome worthy meſſengers of your companie to ſend, and in all due reuerence to entreat, that the King would grant ycu Canonically a libertie to Elecſt your Paſtor. And,

Ep. 66.

Ep. 292. 295.

297.

Lib. 1. ep. 29.

in the Election, *potiſſimas & potentiſſimas habet partes*, he hath the chiefeſtroke, as *P. Ble'enſis*: And after the Election, his Royall aſſent, as *Sarisburienſis*, is required; and after that, the reſtoring of the Temporalties, which *P. Cluniacenſis* doth thus expreſſe, *Rex Francia Elecſtum Lingonenſem (quem quan- tum in ipſo erat confirmari Canonici rogauerunt) de Regalibus ſicut fieri ſolet manu propria ſolemniter inueſtiuit*, The King of France did ſolemnely, as the maner is, with his owne hand reſtore the Temporalties to the Elecſt of *Lions*, whom the Canons of that Church did deſire to be confirmed, what lay in them.

Ep. 164.

And *St. Bernard* (I thinke concerning the ſame action) *E- lecſtus Lugdunenſis petijt, & obtinuit à Rege Regalium Inueſtitu- ram*, The Elecſt of *Lions* deſired, and obteyned of the King the Inueſtiture of the Royalties. And all theſe remaine yet vnaltered; no more being euer anciently required in a regu- lar

lar

lar course. The Inuestiture principally being accounted the last action by seuerall ceremonies, as St. Bernard distinguisheth them, *Inuestitur Canonicus per librum, Abbas per Annulum, Episcopus per Baculum & Annulum simul*, A Canon is Inuested by a booke, An Abbot by a Ring, a Bishop, by a Staffe and Ring together. As for Free Chappels, Præbends, and Benefices without cure, I haue read nothing, onely P. Blesensis saith concerning the Deanrie of Vulrehanitin, *Quem Decanatum semper de consuetudine Reges Anglia donauere*: Which Deanrie alwayes of custome the Kings of England haue giuen. But to leaue this digression.

Serm. 1. de
cæna Domini.

Now Woluer-
hampton.
Ep. 152.

The Authour saith, *The substance of these Inuestitures was forbidden in the 8. Generall Councell.*

But I too well vnderstanding the nature of Inuestiture, saith, *Octaua Synodus solum prohi et eos interesse electioni, non concessioni*: The 8. Councell onely forbids their interest in the election, not in the concession; which concession was the substance of Inuestiture, as he there saith: and so also doth he expound the meaning of the Councell, Ep. 102 But Gregory 7. and his successors denied this also, as the historie doeth manifest. And besides the Inuestiture of Parochiall Churches, (which vpon the pretence of being *Advocates* many Patrons did then challenge after the yeere 1000. for before I reade of none) was denied by him and his successors, as in the Councils cited vnder Gregor. 7. Callixtus 2. and Innocent 3.

Animad. 39.
Ep. 65.

Yet this challenge may seeme but rarely made, for lacke of *P. 92. Priests without titles, and the want of opportunitie of Resignation into their hand.*

Both which, for that by the Canons they were so strictly forbidden, as hee confesseth, it is not likely that the Bishops in ordering such, or the Priests in resigning to Lay men, were so frequent, since the Canonickall censures were so immediately ouer them. But yet suppose both, it was not lawfull, that they might inuest one though in Orders, to any Benefice, without the consent, much more, the notice of the Bishop, as before I haue shewed, &c. And the Councell Nan-

Animad. 40.

Ad. p. 87.

c. 1. 6.

Forte cui.

netens. proposeth the case, *Ut si quilibet Presbyterorum— defunctus fuerit, vicinus Presbyter apud secularem Seniore nullam precatione, vel aliquo xenio Ecclesiam illam obtineat, * quia titulus per se antea constans extitit, sed neque Capellam sine consultu Episcopi: Quod si fecerit, definitam sententiam sibi prolatam suscipiat, sicuti de Episcopo Canonica decrevit authoritas ut si per ambitionem maiorem civitatem appetierit, & illam perdat quam tenuit, & illam nequaquam obtineat, quam usurpare tentavit:* That if any Priest dying, his neighbour Priest doe by any gift or entreatie obtaine that Church or a secular Lord, who before had a settled Cure; but not so much as a Chappell without consent of the Bishop: which if he doe. let him undergoe the same censure, which the Canons have decreed for a Bishop, that through ambition desireth a greater See, that he lose what he had, neither obtaine that Diocese, which hee assaied to usurpe. It is likely therefore, that not much practise of such Inuestiture was vntill the end of these 400. yeeres: wherein that controuersie grew very pernicious to the Empire, and France, and this our kingdome, while the question, *An inuestitura sit heresis*, whether Inuestiture were an heresie? troubled some of the learned, as in *Iuo* his Epistles, and others of *Goffridus Vindocinensis*, is euident: And others, whether Inuestitures were lawfull? as *Walthram*, the Clergie of *Leige*, *Sigebertus*, &c. and their aduersaries.

P. 93.

But to follow him, hee saith, *Not vntill about the end of these 400. yeeres, Institutions vpon Præsentations were not before commonly practised, especially in the case of Lay Patrons for which he citeth, Concil. Lat. sub. Alex. 3. c. 9. & 14. Extr. De iure Patronatus, c. 4. 10. 21. & Tit. de Institut. c. 3. & Tit. de præbend. cap. 3. In Lateranensi: which hee saith, makes that appeare.*

*Animad 41.
Ad p. 83.*

But he that remembreth the Canons, and Capitul. before cited, cannot thinke, that Institutions by the Bishop or the substance, to wit, the notice and approbation of the party vpon præsentation to be so new, neither do those Canons make it otherwise appeare, but rather iudge the contrarie practise of any to be indeed

indeede vsurpation vpon the regular and lawfull course, which was by institution; and they are censured in his owne quotations to bee, *Tanta audacia*, of such boldnesse, *Tit. De Iure patr. c. praterea*; and the action, *De quibus penitentia ducti ipsi patroni*, which the Patrons repented of *Ibidem. c. cum Lai- ci*; and they are stiled, *presumentes*, presumptuous. *c. Relatum*. the Action *Nulla*, void: the custome *iniqua consuetudo*, an vn- iust peruerse custome. *Tit. de Institut. cap. Ex fide*: And the rest of the quotations, shew them but irregularities, and there- fore not commonly practised.

Hee proceedeth to say, that in Appropriations, there did passe P. 94.
not onely the Title, but all Endowments, the Glebe and Tythe, but were made parochiall, by grant, foundation, or custome.

Especially that Title of grant, if he suppose it taken imme- Animad. 42.
diately from the Patron, is false as before, for it is prooued to be granted by the Bishop.

And againe in that he saith, *In some Appropriations by promi- sion of the Patron, or at their owne pleasure they might present or not*. This cannot be shewed without that exemption by the Bishop, to whom alone it belonged to giue a Church to bee enioyed *Pleno Iure*, as afterwards.

In this passage, Hee presupposeth in Appropriations, the onely authoritie of the Patron; But that hee cannot prooue.

The maintenance of the Vicar, was at the bountie of the Mo- nasteries allowance. P. 95.

It was not: in all Appropriations almost, the Bishop Animad. 43.
referred this authoritie of allotting a competent maintenance to the Vicar, which vpon the complaint of the Vicar, by ordinations and compositions hee did vsually put in pra- ctise, and as further neede was, did increase: examples are infinite.

In those that were conveyed Pleno Iure, the Monasterie had institution and destitution, and the profit.

The interpretation of *pleno iure*, and *non pleno iure*, I leaue Animad. 44.
to the Canonists, it being nothing belonging to my professi-

on; which yet in regard it cannot bee prooued, but that all Appropriations were by consent and authoritie of the Pope or Bishop, doth nothing make for his intention, But of that heereafter; Onely adde this out of *Lindwood*, *Religiosi non possunt habere potestatem instituendi & suspendendi autorizabiliter, sed ut vicem gerentes Episcopi*, Monkes cannot haue power of institution and suspension with authoritie, but as the Bishops Vicegerents. *Tn. de locat. & conduct. cap. licet Bona. V. Asserunt non ligare*. And so this priuiledge to haue it *pleno iure* can be onely from the Bishop.

P. 98.

That some Patrons gaue the profits and reserued the patronage, may be true.

That the Church Glebe, and Tythe passed equally by way of interest to the Monasteries, is true, so that they might officiate them themselues by some Monkes receiued into orders, as some did.

P. 99.

That Tythes were giuen, the Church still remaining presentable, is most true and most frequent.

Animad. 45.

Yet not by Patrons prouision, but by ordinarie and Canonically right, for so doeth *Innocent* confirme that Charter cited to Saint Germans in *Auxerres*, *salua Diocesani Canonica iustitia*, The Canonically right being reserued to the Diocesan.

But now hee commeth to that which must answere all hee can say, to prooue that the confirmations of Popes and Bishops did adde no validitie in secular or common Law then practised, but were gotten by Monkes to satisfie the Canons.

Animad. 46.

Heere he shifts, and when he cannot denie the validitie of such confirmations in the Ecclesiasticall Court, which hath the proper cognisance of such conueyance, witnesse many Titles of the Decretalls, and himselfe afterwards; Yet now he would demand validitie of such in secular and common Law, where as yet hee hath shewed, euen no practise of common Law to denie it.

Pag. 100. 101.
102, &c.

That the Bishops of Germanie, and some more Northerne, had from the beginning of Christianitie, the right of all Tything through

through their Diocesses, and therefore might appropriate what they list, is true.

Whereby, both the euen age, and right, and practise of Christianitie with Tything, is manifest, and the authoritie of Bishops in disposing them doeth appeare: Whereas hee would make Tything *voluntarie* in the Originall, and at the dispose namely of the Patrons, onely vpon the foundation of a Church; whereas now hee confelleth, they were all due to the Bishop from whom, without his consent, how could any thing be restrained to a particular place? And further, since thele first were in the Bishops, who were the *true and immediate Parochiall ministring Rectors* (as hee phraseth it) all Donations by them to Monasteries, cannot be adiudged in those Monasteries to be newly created Tythes; which yet he doeth often intimate.

For conclusion of Inuestitures and Appropriations (wherein his errour is in the authoritie of conueying Tythes) now hee would by the practise of the time deuelt the Clergie of the sole right of claime to them; for, saith he) *The Tythes of LX. or LXXX or more Parishes, were by those courses annexed sometime to one Monasterie, which the Head and Couent possessed, not as any part, or pretending themselves to be any part of that Clergie which made up the Euangelicall Priesthood; or deserued them by ministring Diuine seruice and Sacraments to the owners. These, to be giuen to aliens, was complained of in Edward the 3. time: And other particular Orders were blamed therefore, as in that of the Cluniacenses, as P. Cluniac. lib. 1. epist. 28. and Iohan. Sarisburiensis, de Nugis Curial. lib. 7. cap. 21.*

Such appropriations to Monasteries, although they be not excusable, and by many others are complained of, as by *Hugo Pontiniacensis*, and *S. Bernard* in an Epistle after those of *Iuo*, and by *Stephanus Tornacensis*, *P. Blesensis*, and in the person of the Abbot of Redding: besides those scrupulous Monkes in *Iuo*; by *Petrus de Alliaco*, though a Cardinall and a Schooleman, in his booke *De Reformatione Ecclesie*, cap. *De Reformatione Religionum & Religiosorum.*

Animad. 47.

Pag. 106.

Animad. 48.

Epist. 74.

Epist. 82.

Epist. 107.

Epist. 192.

Yet

1. Yet they might pretend excuse, partly because they acknowledged it *no due*, but *charitie*: for so in *Iuo* in the Epistle last quoted, *Lege charitatis*, By the law of charitie; and, *Vt charitatiuè sustententur*, that they may be charitably relieued, as *P. Cluniacensis* in the Epist. quoted, and *indalgentia, non debitum*, fauour, no due, as *Hugo de Sanct. Victor.* may import.
- De Sacramen-
tis, lib. 2. part. 9.
cap. 10.
2. And because they were accounted a part of the Clergie, for so saith Pope *Alexander*, and *Gregorie*, and *Paschal* the 2. and pretended that right, for s^t doeth *Alensis* euen in the Resolution, *Cum Religiosi in Leuitarum ordine & munere computentur, Decimas recipere possunt, sed quæ sibi concessæ sunt*; Whereas Monkes are reputed in the order and number of Leuites, they may receiue Tythes, but such as are granted them by authoritie of the Church. Nay doeth not *P. Cluniacensis* in the Epistle cited by him say, *Nam si tribui Leui rectè eadem Monachis conceduntur, &c.* For if to the Tribe of Leui they were granted, then rightly to the Monkes.
- In Addit. ad
Concil. Later.
p. 13. c. 3. Ibid.
cap. 9. cap. 10.
P. 3. q. 5. M. 6.
Art. 2.
3. And thirdly, because they gaue, *Competens beneficium*. A competent maintenanceto Curates, (for, *Si ista non fecerint raptores sunt, & Decimas retinent iniuste*, If they doe not so, they are robbers, and vniustly detaine Tythes, saith *Alensis* in the place before) if they did not officiate them themselves, which yet was irregular, as *Stephanus Tornacensis* (the first Commenter of *Gratian*) doeth say: and so *Edictum Tassilonis, legum Antiquar.* p. 439.
- Epist. 200.
4. And fourthly, because it was supposed to be, *Ex superabundanti*, of what might bespared, as the same *de Ales*; *Ex portione pauperum*, not *sustentatione Clericorum*, Of the portion of the poore, not the sustentation of the Clergie, as *Hugo de Sancto Victore*. with that condition, *Vt terminos non transgrediantur antiquos: i. Si stipendia Presbyterorum antiquius instituta non minorent ac sibi usurpent*, That they passe not the ancient bounds; that is, that they lessen not the ancient allowances of the Priest, and vsurpe them to themselves: and, *Quod Ecclesia cum omnibus pauperibus potest habere commune*, as *Iuo*, *Quod Ecclesiam non grauet*, as *Toletan.* 3. what is not burthensome to the Church.
- De Sacram. l. 2.
p. 9. c. 10.
- Epist. 192.
Cap. 3.
- And

And firstly, because these Donations to them at first, seemed to be but for the life of the Donor, for *Bishops* might renew them, *Aurelian. 5. can. 15.* and *Titulo de Decimis c. dudum*; And for the *Parson* that he might, reade *Adrians Epistle in Addit. ad Concil, Later. part. 15. c. 11.* which I am perswaded was the intent of that time: For else, what need of such *successive confirmations*? And if they might not *infeodate* for longer, why might they quite giue away? But that they did *infeodate* or make leases, but onely for their time, besides the Testimonie of *Iuo, Epistola 12.* the obseruations of *Franciscus Iuretus* vpon him make it manifest. And before the quotations there, the Lawes of *Hlotharius* may testifie, vpon which graunt the præscription of fortie yeeres incurring, did make a perpetuitie, *videtis Hincmarum in Dialog. de statu Ecclesiæ*, and *Gratian* out of a Councell of *Carthage*.

5

Leg. Longob. lib 3. tit. 10. cap. 2 & 4. Pag. 656. & 663. 10. q 2. de præcaris que a.

And lastly, because *not the right*, but *the Tythe it selfe*, was conferred on them, for which onely they could plead, not from the gift of the Patron, but concession of the Bishop and Patron, who must also concur to iustifie the Title of *their enioying*, as after out of the *Chartularies* of *Rochester* shall appeare; These reasons besides thole other pretences of prayers and other exercises of Deuotion, may seeme to reason the charitie (though wee may call it superstitious prodigalitie) of those ages in the Collation of Tythes to Monkes: though they might not misconceiue of the Diuine right of payment (which after is inferred) nor præiudice the Clergie in the *right* in the possession of them.

6

As for the pretence of hospitalitie, why they had Tythes, *Pag. 108.* *P. Damians* is cited, *lib. 2. Ep. 14.* The words are, *Enimvero ut copiosiora in pauperes alimenta proficiant dantur in Monasterijs & Eremitis decimæ quorumque prouentuum, & non modo pecorum, sed & ornicum pariter & ouorum*; For that there might be better fare for the Poore, There are giuen in Monasteries and Hermitages, Tenths of all prouision, not onely of Cattell, but of Foule and Egges.

R

The

Animad. 49.

The place of *P. Damianus* I well vnderstand not, yet I suppose by this, no gift of others to Monasteries, but the Tenth of the Reuenues of all things in *Monasteries*, are to encrease the prouision for the Poore. The words before and after are not vnlike to that in *Concilio Aquisgranensi sub Ludouico Pio*, where, the Councell commanding some place to be prouided for the poore, where they may be together, it decreeth, *ut de rebus Ecclesie tantum ibidem deputent, unde sumptus necessarios habere valeant, exceptis decimis, quæ de Ecclesia villis ibidem conferuntur*, That of the Church estate they would appoint so much there, whence the poore may haue necessarie expence, excepting the Tythes of those Villages which are bestowed.

Animad. 50.

The Stories in *Lambertus Schaffnaburgensis &c.* both shew the *Episcopall* and *Parochiall* right claimed, and the irreligiousnesse of the *Thuringians* to take all occasions to defraud God.

Pag. III.

Yet for that the Author citing him, *Anno 1073.* ends his quotation with this, *Gaudentibus Thuringis, quod occasionem inuenissent, ut tradita sibi à Patribus leges manu militari tuerentur*, The *Thuringians* reioycing that they had got occasion to defraud by hostilitie the lands of their Fathers, as if their *tradita à Patribus Leges*, The Lawes of the Auncestors were against Tything. Adde therefore the next words, *Et dolente Rege, quod dum decimis immoderatiùs inhiaret, pene regnum cum vita amisisset*, The King grieuing that while he gaped after Tythes, he had almost lost his life and kingdome; and euery onethen may plainly see, they meant *Subiection*, not *Tything*. Besides *Lambertus* was aduerse to the Emperour, and a Monke of *Hersfeldt*, for which Monasterie was the warre, it was their owne case.

Lib. I. ep. 10. &
lib. 4. ep. 12.

Infeodation by him doth signifie the conueyance of perpetuall right of Tythes into Lay hands, Now that such were, *Damianus* is alleadged, *Insuper & decime & plebes adduntur in beneficium secularibus*, Besides, Tythes and parish Churches are infeodate to Lay-men.

Where

Where, note they are *le' from the Church*: and if *beneficium* may signifie an infeodation, as in *Damianus* he doth interpret it, then that which next followes, namely,

That they that referre them to Charles Martells time, or any age neere him, are in great errour; is a great errour: For besides the times of *Charles Martell*, whereof before, in the times next succceding, besides the testimony of those there cited; in the *Glossarie, Leg. antiq. verbo, Beneficium*, there out of the life of *Saint Gothard Episcop. Hildesemensis*, it is related, how in the contention of *Lewis the first* with his sonnes, the possessions of the Monasterie *Altabense, pro voluntate eorum, qui sic debacchabantur, Beneficij, immo Maleficij nomine, adiribuebantur*: At their pleasure, who were so outrageous, they were bestowed as a Benefice, nay rather as a Malefice. But Ile referre the Reader to that storie of *C. Martell*.

Animad. 51.

112.
Animad 52.

And here *Krantzius, libr. 4.* (it should bee *libr. 1.*) *Metrop. cap. 2.* in the Margine, hath this scornelaid vpon him, *Mandrabuli ad morem, coniecturas de hac re infœliciter adfert*. And *P. 117.* he saith, *He ignorantly coniectureth*;

Pag. 112.

Whereas his relation of the originall of infeodations from *Charles Martell*, is true; and his coniecture, that the Clergie did, *Cum non satis fiderent, sua iura à Laicis Principibus tueri, p. r:em Decimarum Principibus in manum dare per speciem feudi & beneficij, malentes amittere dimidium, quàm totum*, When they doubted the defence of their rights, by Lay Princes, that they infeodated part of their Tithes to Princes, willing rather to lose something then all, is not so vnprobable to him, who shall read the Decree of *Pope Eugenius 2. in Concilio Rhemenfi, circa annum 826. Authoritate Apostolicâ prohibemus, ut nullus Aduocatus, præter ius, & Beneficium antiquitùs, aliquid sibi accipere, vel usurpare præsumat*: We forbid by Apostolike authoritie, that no Aduocate, besides his ancient right and fee, should not presume to take or vsurpe any thing to himselfe: Where *Beneficium antiquitùs*, seemeth to be giuen to the *Aduocatus, or Defensor, or Vicedominus,*) who, as the Capitularies say, was to bee procured from the Empe-

Animad. 53.

Lib. 5. cap. 3.
& lib. 7. c. 338.

Apud Goldast.
Constitut. Im-
perialium. 2.
pag. 5. as in
Reuicw, pag.
466.

roure:) and shall further conceiue vnder pretence thereof, what interest these Aduocates vsurped, as *Iohannes Sarisburiensis* Epist. 115. relateth; which for a while the Church tolerated, as *Alexander 3. in Concil. Lateran. pag. 1. cap. 17.* But *Fredericke Barbarossa*, (or *Henry 6.* his sonne, as *Arnoldus Lubecensis* in *supplem. hist. Sclauorum*.) approoues it to bee true: the words are; *Sed cum tempore Christianitatis, ab aduersarijs infestarentur Ecclesie, easdem Decimas prapotentibus, & No. ules viri ab Ecclesiis in Beneficio stabili acceperunt, ut ipsi defensores Ecclesiarum fierent, quæ per se obtinere non valerent:* But when in Christianitie, the Churches were disturbed by the aduersaries, Great men tooke Infeodations from the Churches, that they might be Aduocates for the Churches, in what they could not by themselves obtaine.

To confute *Stephen Pasquier* his opinion, that Infeodations beganne in the holy warres, betweene 1090. and 1100. he truly produceth *P. Damian. in the place before, and the Councellof Lateran, held 1078. Decimas quas in vsu pietatis concessas esse Canonica autoritas demonstrat, à Laicis possideri Apostolica autoritate prohibemus: Sine enim ab Episcopis, vel Regibus, vel quibuslibet personis, eas acceperint, nisi Ecclesia reddiderint, sciant se sacrilegij crimen incurrere:* Tithes which the Canons manifest to haue bene granted for the vse of pietie, by Apostolike authoritie, we forbid Lay men to possesse, whether they haue receiued them from Kings, or Bishops, or others; vntill they restore them to the Church, they vndergoe the censure of Sacriledge. This is iterated in the same syllables, in the generall Councell at Lateran, 1139. vnder *Innocent 2.*

But yet out of the Councell he makes inference, as if onely Lay men did make these Infeodations;

Animad. 54.

Whereas the word, *ab Episcopis*, might haue remembred him of Bishops, as well as *P. Damianus*, vpon whose complaint of the abuse of that time, this Councell might take occasion, it being very few yeeres after his death: And the word therein, *Regibus*, from Kings, might haue made him thinke of *Charles Martell*: and the word, *reddiderint*, they restore,

store, make him acknowledge what after he will denie, both that all *Infeodations were from the Church*, and that the true reading of a Canon of the Lateran Councell vnder *Alexander the 3.* to the same purpose, is to bee *reddiderit*, not *tradiderit*.

Which two last errors, the Canon, *prohibemus*, in the Councell of Lateran, vnder *Alexander the third*, p. 1. cap. 14. is interpreted to maintaine: though brought to prooue, that then, and not before the use of such new *infeodations as staied*, not that any annullation of the old was intended. P. 114.

The words are, *prohibemus ne Laici Decimas cum animarum suarum periculo detinentes, in alios Laicos possint aliquo modo transferre: Si quis vero receperit & Ecclesia non reddiderit Christiana sepultura priuetur*, Wee forbid that Lay men detayning Tythes with perill of their soules, may not by any meanes passe them to other Lay men, but if any shall receiue them and shall not restore them to the Church, let him want Christian buriall.

Ignorance is imposed upon the later Canonists, that oppose this Canon, against the right of all feodall Tythes, ancienter then the Councell: And *Innocentius the fourth*, and *Hositiensis*, *Bernardus*, and *Bombis* are opposed to them: whose authorities may bee truely cited, yet not interpreted of *Infeodations*, but *De Decimis male detentis*, as in the page 156. hee quoteth out of *Innocent the fourth*, and so his opinion of the prohibition of future *infeodations* haue no prooffe from thence, nor opposition therein to the elder Canonists. But mee thinkes, hee that considereth the aime of those times, onely to get them from Lay men, *Nec multum refert quæ Ecclesia habeat dummodo extirpentur à Laico*, It is no matter what Church hath them, so they may bee gotten from the Laitie, as *Pasormitan* cited by him, pag. 156. And considereth also, how they decreed, that not so much as the Patronage should bee passed by succession, but to the Clergie *Addit. Concil. Lateran par. 15. cap. 6. nor so much as bee solde, cap. 16. & 17. Quia Spirituali annexum: see Epist. Pas-* Animad. 55.

*Vide etiam
in Gratian. c. 10
q. 7. in Prefat.*

chal. 2. inter Epistolas Anselmi lib. 3. Epist. 45. might well imagine the intention to reduce the *thing it selfe*, *Infeodations* present, not future: Especially conceiuing it to haue beene decreed against, by *Gregorie* the seventh, *Vrban* the second, and *Innocent* the second, which are euen quoted by himselfe. And may any suppose that Pope *Alexander* the third would haue had lesse stomacke, and would not claime the Tythes? I will not bee perswaded; especially hee vsing the same word *Reddiderit*, as a badge of *their intention*, and *his owne*. Nay himselfe *par. 4. cap. 1.* decreeth an infeodation euen from an Abbot into Lay hands to be void, *quonia Sanctuarium Dei iure hereditario possideri non debet*, Gods Sanctuarie must not bee held by inheritance, which is the same in effect. Who then would not trust, rather *Innocentius* the third, who interpreteth it of Tythes formerly infeodate (and was next successeur to *Alexander* the third) as in *Tit. de His que a Prelatis. c. cum Apostol.* or the other Canonists, who vnderstand it by *Indiciall application* as he confesseth *p. 139.* then only rely on his *coniecture*?

But besides, by the very sense of the wordes, *cum Animarum periculo detinentes*, detaining them in the perill of their soules, who will thinke that any man might by law seeme to haue right to passe those Tythes to another, wherein himselfe had no right? the conueyance it selfe was *irrita*, voyde: Sure therefore they claimed a right; and how, but by infeodation? by which Title (though it was against conscience for any to detaine Tythes) yet some shew of *Ciui!! Title* might countenancethat Action, which is heere forbidden. But bee it as it will, let the Canonists decide it.

That which followeth is more pertinent to this businesse. Hee saith, *surely it is an errorr, which is commonly supposed, that all ancient feodall Tythes were at first Spirituall and transferred from Church-men, at the request of Princes* (hee might haue added or Tyrannie) *into Lay hands*, and since wrongfully detained, *Neither is there any ancient warrant sufficient for it.*

The

The Historie of *Charles Martell* before, doeth make the contrarie plaine; and the Catalogue of Authours, shew both the Diuine *due*, and *payment* long before. Animad. 56.

But yet hee is of opinion, that *many of these Infeodations were doubtlesse created by lay-mens Grants, as Rents-charge, Estovers, Turbaries, and the like are: Who can doubt of it, saith hee, that obserues but alone this Canon Prohibemus? Whence also* Pag. 115. *may be strongly inferred, that the greater number of infeodations were by Grants made by Lay men to Lay men: for what is there, onely forbidden by the Councell, may be thought the greatest and most preiudiciall practise of the times against the profit of the Clergie; neither is any prouision there made against the other kindes of Infeodations which passe Tythes from Church men. I haue more largely repeated this, because though hee made no doubt of it, the ground is false.*

For that they were created at first by Lay-men, hee *can neuer prooue*; yet because it is said, *In alios Laicos possint transferre*, hee would needes inferre the *originall of Infeodations*; whereas it can be onely the after deriuation, for else then he must presuppose in this Canon, that euen vntill that Councell (for it *denies not Infeodations before*, saith he) some Tythes had not beene consecrated to the Church: whereas the very word *detinentes*, implies a right in the Church; and the word *reddiderit*, doeth plainely shew the ancient possession. Animad. 57.

But hee hath found a *new Edition*, which because it makes Pag. 115. *against the Church, is the truer reading; Tradiderit, not Reddiderit.*

Although it be *Reddiderit* in the Canon, and in the *body of the Councell in Roger Hoveden*; and he might haue added in *Neubrigensis*; and, in all the Commentaries vpon the *Decretals* both olde and new, in *Alensis*: Besides the *Councils* to the same purpose before cited, which reade *Reddiderit*: And yet the *new Romane Edition* of the Councils, with some other of lesse authoritie, shall sway the reading to what he will. Animad. 58.
Lib. 3. cap. 3.
Q. 51. Memb. 6.
Art. 1.

But his next coniecture (though but a coniecture) is more reasonable, *That Patrons in the Vacancies might infeodate, as by* Animad. 59. *the*

the Common Law the Patron and the Bishop may: (sure the Common Law nor common lawfull practise, neuer left out the Bishop in such disposition) because the Patron had the onely disposition, as hee saith hee hath prooued (but I know not where) yet saith he, Patrons granted whole Churches, and therefore citeth Flodoard in many passages, and Damian before, and the Councell vnder Innocent.2.

Animad.60.

But whether these Churches were not first Spirituall possession before Lay-infeodation, is the question: for else, Laymen did passe their Fees to others; but the sense of the command of the Councell vnder *Innocent* the 2. of restoring it to the Bishops disposition, shewes from whence it came; and *P. Damianus* his authoritie is plaine, that the Bishops made them; and as for *Flodoard*, hee hath nothing to the contrarie.

Animad.61.

And the next example (though produced to oppugne it) of *Charles the Balde*, or *Charles the Simple*, (though the very like acte done by him in *Concil. Meldensi, cap. 75.* make me thinke it *Charles the Balde*) plainly shewes it; where it is, *Ecclesiam cum omnibus ad eam iure pertinentibus*, The Church, with all the lawfull appurtenances. But in that it had both consecration, or else not *Ecclesia*; and *Dotation*, or no *pertinentia*; and *Tythes*, or else not *omnia*: therefore it came from the Church. How then can hee conclude out of these no premisses, the originall of infeodations from such Grants, whereas the Churches right, at first, either by consent; or Tyrannie of Princes parted with, is alwayes precedent? Nay himselfe next, sayth, that *Princes sometimes ioyned with the Bishop to bring in the paiment of Tythes, that they might haue beneficiall infeodations from the Church, not make them themselves.*

And yet in the next words hee sayth, *But as Princes made infeodations out of their owne demesnes, or their owne Churches, so other priuate Lay persons did.*

Animad.62.

O incoherent confirmation or consequence, since hee hath neuer prooued, that Princes did, though if prooued, it followeth not! He

He sheweth next how *the Clergie did infeodate.*

But those were annullate : of those quoted out of *Innocentius the 3. pag.447.* the first was *resigned*; the second, *pag.482.* by sentence was *repealed*, and the rest proposed are by his owne Authour discommended.

*Pag.117.
Animad.63.*

In the next Section he speaketh of *Exemptions*, but beginneth, as if he had prooued, *that Lay-men had enioyed a libertie in not subiecting themselves to the payment of Tythes according to the Lawes of the Church, but bestowing or retaining them at their wils, in most places, euen from the beginning of Christianitie, untill about the yeere 1200.*

Pag.118.

This Hee neither hath, nor can prooue, though it bee *the conclusion* which he wholly intendeth; and the *libertie of Exemption* præsupposeth euen that which he would denie, *parochiall payment.*

Animad.64.

The Canon pointed at by *Burchard, Iuo, and Gratian*, in the Councils at *Chalons* or *Mentz*, is in *Cabilonense, sub Carolo M. Cap.19.*

Pag.119.

The constitution of *Paschalis the second*, to discharge all Religious persons from Tything to others : was not contradicted by *Goffridus of Vendosme* and *Petrus Cluniacensis*, because *Goffridus* doth interpret it to bee of *Tythes in their owne parishes where they dwelt*, as also *Hugo de Sancto Victore*, who liued then, doth also vnderstand; where instructing his Monkes what they might possesse, saith, *Decimas non recipient nisi de illis quos incolunt agris*, Let them not receiue Tyths, but out of those lands they dwell vpon. And as for *P. Cluniacensis*, he doth onely say, *Patrum temporibus Decimas non tantum Laici, sed Ecclesie Ecclesijs, & Monasteria Monasterijs, & de Rusticorum operibus, & de proprijs laboribus persolunt.* Which custome for the benefit of his Church, hee wished might haue beene continued; And so without contradiction to *Paschal 2.* In the daies of our Fathers, saith he, not onely Laymen payed Tythes to Churches, but Churches to Churches, and Monasteries to Monasteries, both of their owne labours and of their seruants.

*Pag.120.
Animad.65.*

*Tom. 2. de
Claustro anima
lib.2.c.5.*

Animad. 66.

Ep. 240.

P. Blefensis.
ep. 82.P. Cluniacens.
lib. 1. ep. 33.

Animad. 67.

Pag 122.
NB.

Pag. 124.

The generall exemptions of all Clergie, the restraint to the *four* Orders by *Adrian 4.* the particular of *euery* seuerall Order, is too true: And the restraint of *Innocent 3.* was too late: the prodigalitie of consecrations, & exemptions, had exhausted the liuelyhood and learning of the parish Churches; and the miserie that *S^t. Bernard* spake of, was, *Basilica sine plebi-*
bus, plebes sine Sacerdotibus, Sacerdotes sine debita reuerentia
sunt, & sine Christo denique Christiani, Churches without people, people without Priests, Priests without due reuerence, and lastly euen Christians without Christ. The complaint of *Richard Archbishop of Canterbury*, against these exemptions of the *Cistercians*. (for which and for another Epistle against the exemption of Abbeyes from Episcopall Iurisdiction, though both by Papa'll dispensation, I am perswaded he is wronged by the *writing Monkes*) is most earnest and *materiall*, *He dispensationes dissipationes*. And therefore (which is strange) The Monkes of *Clugny* renounced such priuiledge, to auoid scandall.

The Title of the *Templars* was partely, as of the other Monkes before: and more, they had Tythes of the Church *nomine stipendij*, for, *Nemo militat suis sumptibus*, No man warreth at his owne charges. Since therefore, the Churches proper meanes was Tythes, out of them, shee did reward her *Defenders*; and as the *Defensores* and *Aduocati* of their Title, had by ordination of the Bishop a certaine allotted reuenue, so these *denoted Souldiers* who by vow defended Christendome, might well haue some share of maintenance in Tythes, though no immediate and originall right vnto them.

The next Section is touching the opinion concerning Tythes: The opinion of the Councils generally was, that they were due by Diuine ordinance.

No deniall, but by *Lentardus*, who principally for denying this, was adiudged an Hereticke, as *Rodulphus Glaber Hist.* 2. c. 11. and this in him was iudged, *non magis turpe quam damnabile*, not more foule then damnable: wherein because he could not preuaile to retaine ambitiously the people to follow him, he drowned himselfe. This

This opinion is opposed by the practise in the disposition of *Pag. 125.* them in perpetuall right to Monkes, Nunnes, the poore in Hospitals, the Religious Orders of Knights. To this sence he.

But this is answered before: To which if we adde the opinion of that time, that euen the Pope might dispense in the *Animad. 68.* Law of God, as in vomes, marriage, fidelitie; and the inclination of Popes, both to denie themselues no authoritie *Vid. gloss. ad c. 25. q. 1. Sunt quidam.* which their ancelstours tooke, and to doe what they could for the houses of their education, and the pillars of their proud and superstitious Tenets; we may thinke by these Graunts, they did not vnderualue the Diuine right, since as in the place of *Iuo* next quoted and abused, they passed them but *Lege charitatis*, and as *cum pauperibus poterant habere commune*: By the Law of charity, and of what might be communicate to the poore.

And heere *Iuo* his authoritie in *Ep. 192.* being falsely related, altereth the sence: *P. 124.*

For he intending to prooue from the custome, the right of Lay men to conuey Tithes, and citing *Iuo* in that Epistle, and adding, *But this might not be done as they would haue it, by the Lay owner alone; for he well adds, that neuerthelesse, no Monastery might lawfully by the Canons receiue a conueyance of Tithes, illis ad quos non pertinet, i. à Laicis, from those to whom it doeth not belong, that is, from Lay men.* As if *Iuo* onely denied the right of gift, not of enioying, whereas the words are, *ad quos non pertinent*, to whom Tithes doe not belong, &c. thereby absolutely denying both. *Animad. 69.*

The answere of this obiection, whereby he would peruert the meaning of the writers and Councels (as before) or else lay vpon them for confirming them, euen the imputation of fearefull Sacriledge, is thus: *P. 126.*

That without Sacriledge they might communicate; alwayes præsupposing a *renocable right*: onely herein they offended, if vpon complaint or need the Bishops did not reuoke them in time: For by the Canons after 40. yeeres, there was no remoouing, and that, *propter generale scandalum* of *Animad. 70.*

*In vita Ab-
nis, c. 9.*

that time, wherein a Schisme might haue beene feared, as in the Councell at St. Denis, as *Aimoinus* doeth testific, a great outrage was committed: *In generali scandalo non sequitur correctio, vel delinquentis, vel aliorum, ideo propter generale scandalum suspendenda est repetitio Decimarum, quod sequeretur, si vniuersaliter à militibus* (by the same reason à *Monachis*) *fieri repetitio*: In a generall scandall there followes no amendment either of the delinquents or others; therefore for such generall scandall, the requiring of Tithes is to bee forborne, for that would follow if they should generally be exacted of the souldiers, (hee might aswell haue said of the Monkes) saith *Alensis*. So farre was hee from accounting it Sacriledge, to tolerate Infeodations, which are more vniust then appropriations, though he held Tithes to bee due by the Morall Law of God, *quoad aliquotam, or indeterminatam quantitatem*.

*P. 3. q. 51.
M. 6. Art. 1.*

P. 126.

But he addeth, that it appeares, it was most expressely held against the Diuine law, to conuey Tithes to any other Church, then where the Owner used most commonly to receiue his soules food; and therefore the confirmers and Donors could not thinke them due de iure diuino: and for this he citeth Concilium Ticinense, related C. 16. qu. 1. c. in Canonibus.

Animad. 71.

But there in that Canon, not the Conueyance, but the Conueyance *pro libitu, contempta Episcopi dispositione*, is iudged against the Law of God, and Canons; for that *consilio, and consensu Episcopi*, they might, *Videsis ante ad pag. 72.*

P. 127.

There were Exemptions, therefore no such opinion.

Animad. 72.

Epist. 82.

The course of Exemptions was vniust and substantially complained of though by the Monkes of Clugny, who lost by it; yet by Richard the Archbishop of Canterbury in *Blesensis*, and *Iohannes Sarisburiensis*, who lost nothing by it (which is his scoffe) but had compassion vpon the poorer Clergie, spoiled by the Sacrilegious dispensations of the Pope, which in this Argument are by *P. Blesensis* and *Iohannes Sarisburiensis* specified and refuted; The Epistle of *P. Blesensis* was more worthy to be read, then to haue bene quoted out of *Bochellus* at the second hand.

There

There were Infeodations from Churchmen, therefore no such opinion. P. 128.

The Bishops and Religious that let *Infeodations*, are iustly to blame, although they let not *Ius perceptionis*, which is *an-nexum Spirituali* but *ipſos fructus*, as *Iohannes de Parisiis* doeth distinguish and *Aquinas*, and *Alensis*, because the true end was diuerted, the maintenance of the Clergie, though they referued the right, for in their right the *Fiefe*, might duely demand them; Whereby, they might saue themſelues from committing Sacriledge: Though their opinion was, the right of Tything did belong to the Clergie, *De Iure Diuino*; Yet euen their Acts, were annullate, as besides the Authours cited, *Alex. 3. in Concil. Turonensi. Anno 1163.* (where the action is censured, and the Authors degraded) doth testifie.

Animad. 73.
De potest Reg.
& Pap. c. 2. ad
Arg. 38.
22. q. 57. Art. 3.
in Corp.
In quest. citat.
M. 8. Art. 1.

And next, by the way hee obtrudeth his new improbable errour of Tythes by their first creation *infeodate to Laymen*, but it seemeth now, hee would interpret himselfe, that he meaneth not Church Tythes, but such as Rents charge vpon land, under pretence whereof, hee will presuppose, that they would shift paying of Tythes to the Church, because they would not pay double Tythes.

In Neubrig. l. 2
c. 5. §. Quamuis
Nimis.

A strange coniecture; whereby the *Infeodators* are supposed *Sacrilegiously fraudulent*; and the Church men so seely, as ha- uing lawes both Ecclesiasticall and Secular to abett them, would admit of such simple excuses, and neuer complaine in those former times, that their redresse might haue been recor- ded: Let him shew the vse, and then let him vrge it. Concerning an example of Clergie men in the Archbishopricke of *Matera* after shall be spoken.

Animad. 74.

The Lawes are next produced, but saith he. *soone disobeyed*: they had little or no practise in behalfe of the Clergie. The greater fault, the more pittie. Pag. 132.

But heere *Hector Boethius* relating the Lawes in Scotland of Tythes, by King *Congallus Anno 570.* is excepted against, nay reuiled: the exception; The Author for this is called a *faining Hector*, and his assertion bold, or deceived by them from whom

Pag. 130.

hee tooke it , it is to bee iudged fabulous , and proceeding out of that common mistaking of ancient passages of Church Reuenues , and confident , but ignorant application of them to Tythes ; And in the Margin ; Buchanan sayth , *Sacerdotes pradijs alijsque prouentibus ditauit , in Decimis , adicere uir doctissimus non ausus est* , Hee enriched the Priests with possessions and other profits, but that learned man durst not adde the word Tythes.

Animad. 75.

Inter Aug. Ep.
13.

How should the Authour expect, his booke might gaine any strength of truth from his name alone, when Hector Boethius for all his good language and great paines, shall not onely not haue credit with him as pag. 133. but be taunted by so yong a writer : but hee may heare Saint Hieromes censure (to as good a man as He, euen S. Augustine) *puerilis est iactantia accusando Illustres viros suo nomini famam querere* : especially sincethrough Hectors sides, others perchance truer Troians may bee wronged of whom hee receiued it ; who by the prejudice of him that knoweth not, shall bee censured for confident and ignorant mistaking one thing for another. As for the Marginall reason, the omission by Buchanan of the word Tythes, which Hector putteth in, is but to poize their credits, whether a lying and schismaticall Buchanan, who was a prime Authour in the taking away of Tythes from the Clergie, and therefore might well take it from his writing ; nay who might euen take that relation from Hector, mincing it to his phrase and fancie : or a faying Hector, perchance receiuing it from other, it may bee the very Records of the Kingdome, bee to bee preferred in this Relation. Hector Boethius saith before of the same Congallus, *Mira sunt quae de huius Principis Religione memoria sunt prodita*, They are strange things which are related concerning the pietie of this Prince. What therefore hee writeth hee had from others: But our Authour striketh the next.

In the next place the Pontificall Canons are examined.

P. 134.

Of which he citeth, besides that of P. Damasus, that also of
Pope

Pope Nicholas the second, Anno 1059. *Præcipimus ut Decime & primitiæ seu oblationes Vinorum & Mortuorum, Ecclesiis Dei fideliter reddantur a Laicis, & ut in dispositione Episcoporum sint, quas qui retinuerint a Sanctæ Ecclesiæ communione separentur*, Wee command that Tythes, or first fruits, or offerings both of quicke and dead, be faithfully payd to the Churches, and be in the disposition of Bishops; which they that retaine, let them be excommunicate: which very words are his Successors *Alexand. 2.* And that of *Leo the 4. c. 16. q. 1. c. De Decimis*, (which forsooth must be a declaration, not a constitution) all which with the passages of the Fathers, were for generall Canon-law in *Gratians decrees* confirmed by *Eugenius the 3.* Nay the Councell at *Cleremont* by *Vrban the 2.* and that of *Gregorie 7. in Concil. Rom. c. 16. q. 7. c. 1.* To which hee might haue added that Canon of *Gregorie* cited by *Alexander 3.* ioyned with those of *Peter Cellensis*: *Presbyter si Ecclesiam per pecuniam obtinuerit, non solum Ecclesia priuetur, sed honore Sacerdotij spoliatur, quia Altare, Decimas, & Spiritum Sanctum emere, vel vendere, Simoniacam hæresim esse nullus fidelium ignorat*: If a Priest get a Church by money, let him not onely be depriued of it, but also be degraded; because each Christian knowes, that to buy Altar, Tythes, &c. is a Simoniacall heresie: And that at *Lateran. 1119.* and another *1130.* hauing the same words as that of *Greg. 7.* *Quas de iure Sacerdotum esse sancimus*, Which we decree to be the Priests due: And the *11. generall Councell vnder Alexand. 3. 1180.* (where onely *infeodations*, saith hee, and *arbitrary consecrations* without consent of the Bishop, are forbidden; yet the reason is, the supposition of Parochiall right:) But let me adde in the same Councell, *cap. 23.* In the prouision for leproous people, are not Tythes supposed as a duety of common right, when (prouiding for the right of the Parish Church) they are permitted to haue a separate Priest and Church, and are priuiledged of their orchard and feeding of cattell, *that Tythes should not be exacted*: By this particular priuiledge, is not the common right supposed? Nay so often he hauing quoted the Capitulars,

Vide Luithprandū in vita Leonis 4. ubi auctoritate Apostolica præcipitur, sub pœna excommunicat.

Epist. 19.

pitulars, whereof the last three bookes were confirmed by Apostolike authoritie, *Capit. lib. 7. c. 377*. Yet hee saith, *There was not any Canon of a generall Councell, that commanded the payment of Tythes; or any that expressely supposed them a duty of common right, before that of Lateran, helde vnder Pope Innocent the 3.*

Animad. 76. Let the Reader iudge of his Conclusion, out of such premises.

Pag. 136. In this passage he citeth an Epistle of Gregorie the 7. wherein hee admonishest and perswades some Princes of Spaine, after the expurgation of Christianitie from the Gothicke corruption, to pay and command the payment of Tythes by the people: where, because he doeth perswade, and not command, hee inferreth, that he had no power to command.

Animad 77. As though authoritie must be thought alwayes extended to what it can, neuer in discretion condescending to the infirmities of weake brethren. The spirit of Hildebrand challenged power, where he had no right: but now, *Fides suadenda, non cogenda*, Faith is to be perswaded, not inforced; and *Alcuins* ground was his direction. But let vs see how his successor *Alexander* the 3. writes to those *Goths* in the Epistle 19. whereof part is quoted before, *Præterea illud adiuciendo mandamus, quatenus populum regimini & gubernationi vestre commissum, Decimas Ecclesiis fideliter & deuote persolvere, sicut ab ipso Domino noscitur institutum, diligenter ac sollicitè moneatis, & si necesse fuerit, sub districtione Anathematis, &c.* Moreover, this we command, that you diligently and carefully admonish the people committed to your charge, that they pay Tythes to the Churches, faithfully and deuoutly, as it is knowen to be ordained by the Lord, and that if need be, vnder the censure of excommunication.

Vide etiam Ep. 21. Archiepiscopo Upsellensi & Suffraganeis.

Pag. 138. But out of that strange conclusion, hee would iustifie the saying amongst the *Common Lawyers*, in his sense, *That before the Councell of Lateran, every man might haue given his Tythes to what Church he would.*

Animad. 78. Wherein, if hee would vnderstand by giuing, the translation

tion from his owne Parish Church to a Monasterie, because the easie consenting of the Bishops vsually hindred not, then it is most true; but vnderstanding by giuing, *a new creation*, that each man might giue to what Church he would; that is *newly create*, a Tythe, which before he might detaine, and did neuer pay; this is absurd, and prælupposeth that no Tythe before that time, by any man was certainly paide; whereas *Parsons* did before that time implead their parishioners for not paying; as heere in England himselfe doth produce, in *King Stephens*, and *Henry the seconds* time, p. 414. &c. To which more shall be added.

But this cannot stand, vnlesse hee may haue his will vpon the Canon *prohibemus*, in the Councell of *Lateran*, vnder *Alexander* the third, and make it to signifie, *new created Tythes*.

But either let his owne Authors be Iudge that vnderstand it, *de Decimis male detentis*, of Tythes wrongfully detained: or *Innocent* 3. and those that follow him, of *former Infeodations*; they cannot vnderstand new created Tythes, euen by the very words, as before. And in that Councell is something to denie it. For if *Alexander* 3. supposed new created Tythes, why then *part. 4.* doth he command the excommunication of the *changers, lesseners, detractors of the wages out of Tythes*, Nay, in the body of that Councell why doth he priuiledge the *leprous people* from paying some Tythes, if they were not due to be paid, if he supposed them not due, and payed? But howsoeuer, I leaue him to what before was saide, against which he hath nothing but *coniecture*.

But yet, good Reader, thou must still doubt, *that the Historicall vnderstanding of that Canon, is to be had out of Arbitrarie consecrations before practised.* Pag. 139.

Reader, now thou mayest see, how hee meanes to pinne thee on his sleeue. the *indiciall application* of the Canonists must be neglected who agree in a trueth, and yet at his bidding, thou must doubt. And as hee reprehends the *rable of Canonists* (such is his terme) going away cleere with this of Animad. 80.

Innocent, because he saide so, so must thou follow him, and doubt because he bids thee.

Yet for confirmation of his assertion, Hee saith, *it was equall to ordaine, that Lay-men should not arbitrarily consecrate; and that they should not without the assent of the Bishop, Every Bishop being presupposed to induce parochiall right, and generall payment, which was the intention of the Canons.*

Animad. 81.

This is a strange conceipt; the disposition by the Bishops consent being granted by Canons, as in many quotations before is eident, and in this Councell, *p. 15. cap. 2.* but this *without consent*, being forbidden. And the reason is equall, That so the Bishop might provide for the parish, and yet in charitie, *de superabundanti*, of what might be spared, giue way to such Donations, which as then were not to the Churches prejudice, and to the abridging of the ancient maintenance of the *secular Clerkes*, as *part. 13. c. 1.* of that Councell.

ANIMADVERSIONS on the seventh Chapter.

Pag. 140.

Animad. 1.



Hee saith, *Tythes were subiect to Customes.*

That Tythes were subiect to customs, it was *propter vitandum scandalum*, and not for want of a *true right in conscience* to require the payment.

Pag. 142.

Concerning Parochiall right, First hee saith, *it is sufficiently manifested that the Laitie did vsually conuey their Tythes by consecrations and appropriations to what Church they would, or in Infeodations to Lay-men.*

Animad. 2.

The first is false if the Bishops consent be not vnderstood, and the second also, if not originally from the Church.

But he proceeds to produce Canons, and after many, those of *Innocent 3.* in whose time, at first, hee would perswade vs, that

that Arbitrarie consecrations without consent of the Bishop were void.

But he that will but reade in the Time of *Alexander* the third, *Addit. ad Concil. Lateran. p. 15. cap. 1. 2. 3. 6. 9.* shall find there the like. *Animad. 3.*

Yet that Parochiall right was not before claimed for Tithes, He prooueth, *First, by the practise of certaine Religious, who would vsually take couenants from their Tenants, to pay them their Tithes, and so defraud the Parson, ; which if by Parochiall right had beene due, such a couenant could not haue preuented the Parson. This is related in the Councell of Lateran, vnder Innocent 3. Cap. 56. & Extr. de pactis c. plerique, & Videtis Appendicem, p. 13. c. 6.* *P. 144.*

The consequence is not good, because vntill it was otherwise declared, the generall exemption of Clerkes in their owne lands, euen renewed by *Paschall the 2.* not long before, might make these couenants lawfull, vntill *Innocent* restrained them, as proceeding from a couetous desire, extending that to *Personall Tithes*, and dueties of Sepulture, which was meant of the land: this needed interpretation, before such *Couenants* might be annulate. *Animad. 4.*

The quotation out of the Addition to the Lateran Councell, is false: But yet in *Cap. 11.* of that Part, an excellent case of couenants concerning Tithes, is specified, whereby indeed exemptions are bard, but not *Parochiall right*. A Parson complains how an *Abbot* and *Monkes*, *Decimas vniuersas quas de terris cultis à prima fundatione eadem Ecclesia semper percipere consuevit, infra hoc quadriennium sibi & Ecclesia subtraxerunt*, All the Tithes, whose tillage from the first foundation, this Church hath vsually receiued, within these foure yeeres they had held from him and his Church, by vertue of an Exemption, where fifteene yeeres agoe there was a couenant betweene them, that he should haue for his life all the great Tithes, giuing to them the small Tithes, *propter exaltationem Monachorum*, and this couenant in composition, was adiudged auailable for the Parson against their Exemption. *Animad. 5.*

Animad. 6.

*Ep. Decretal.
lib. 2 p. 483.*

The example next vrged in the Archbishopricke of Matera in *Innocent 3.* for the first part indeed, sheweth how some Clergy men, imposing *Decimas, Terragij ratione* occasioned their Tenants vnder this pretence, to denie such Tithes, which before were payed *truely and fully* to the Parish Churches. But this Tithe, as is plaine, was not Parochiall, but as a Rent, and therefore there was no couenant imposed of paying Parochiall Tithes, which is the inference: But here-upon these sacrilegious Farmours indeed grounded their deniall. Whose fault yet of distributing their Tithes, in the second part, gaue no doubt the occasion to *Innocent 3.* his censure in *the third Sermon, De dedicatione Templi*, before spoken of: Not, but that they had giuen Tithes, but that now they would not; for that is said before, *Cum in quibusdam locis tue Dioceseos integrè quondam Decima soluerentur, dum pradia, de quibus Decima proueniebant essent in Secularium potestate*: Whereas in diuers places of your Diocesse, hertefore Tithes were fully payed, while the Farmes whence the Tithes arise, were in Lay mens hands. And the command is, *Vt persoluant Ecclesiis quibus debentur*, That they pay them to the Churches to whom they are due: *Parochiall* right and practise therefore was before.

P. 145.

But, *the Councell of Tribur. cap. 15. saith, Vbi quis Decimas persoluebat viuus, ibi sepeliatur & mortuus*; as if euery man by the choice of the place of his deuotion, in paying his Tithes, might make it his Parish.

Animad. 7.

But this lence is extorted, for that the Councell speaking of the buriall of the dead, first wisheth the buriall to be in the Cathedrall Church; but if distance or time will not suffer, then in some Monasterie: *Quod si & hoc ineptum, & difficile aestimatur, ubi Decimam persoluebat viuus, sepeliatur & mortuus*: But if this shall bee accounted vnfit and difficult, let him bee buried there where hee payed his Tithes; that is, in his owne Church: which the opposition to Monasteries, and the Cathedrall Church in that Canon (whether most Tithing was diuerted) will enforce, especially the Lawe, being

being that to his own *Baptismall Church*, he should pay them.

The doubt of *Gregorie*, or *Alexander the third*, concerning *Animad. 8.* the question, whether *intuitu Territorij*, or *obtentu personarum*, prædiall Tythes should be paid, is not, out of doubt of *Parochiall* right which they acknowledged, but to which Parish the right did belong: To one or other by *Parochiall* right Tythes must be paid, but to which they could not determine. So that by this, *Parochiall* right is confirmed and presupposed, though the case bee not adjudged, neither doeth it follow as hee would haue it, because there were such controversies, *Parochiall* right was not established, no not in opinion; whereas the opinion of the right, causeth the question; the one and the other craving by that right.

The case of the *Monkes of Boxley*, *Extr. de Decimis c. Com. missum.* *P. 146.* wherein the reason to moue them to pay Tythes *Animad. 9.* to the Parish Church is, *Quoniam priusquam in eadem Ecclesia morarentur solebant persolui*, For because, before they resided in that Parish they were paid vsually: which reason, though *in particular*, was necessarie for the case, because they by the exemption, which *then* was, onely *De Nonalibus*, whereof before nothing was paid; would haue defrauded them, *De ipsis cultis*, as the words are, which *priusquam in eadem Ecclesia morarentur*, were vsually paid, as in all other places. This particular claime then cannot infringe *Parochiall* right, but plainly inferre it.

But yet euen after this Lateran Councell 1215. *although P. 147.* Pope Innocent the fourth, and Hostiensis tooke *Parochiall* right as clearely established, y: t untill the Councell at Lyons vnder *Gregorie* the tenth, 1274. There was no certaintie; for then saith *Randall Higden*, and *Henry Knighton*, and *Thomas of Walsingham*, it was constituted, vt nulli hominum deinceps liceat Decimas suas ad libitum, vt antea vbi vel et assignare, sed matrixi Ecclesiæ omnes Decimas persoluerent, That it shalbe lawfull for no man hencefoorth to assigne his Tythes, as heretofore hee listed, where hee would, but that they pay all Tythes to the mother Church.

Animad. 10.

But this constitution was, that such gifts should henceforth, no not with the consent of the Bishop bee made ; which (though for his purpose he would now haue it) was not in the Councell of Lateran before forbidden. For there, *Can. 62.* it is onely said, *In Lateranensi Concilio, noscitur fuisse prohibitum, ne quilibet regularis Ecclesias seu Decimas, sine consensu Episcoporum de manu presumant suscipere Laicali — Nos autem id fortius inhibentes, transgressores condigna curabimus animaduersione puniri,* It is euident that in the Lateran Councell it was forbidden that no Monke, dare receiue Churches and Tythes from Lay men, without consent of the Bishops, which we more firmly forbid, and will more strictly take order for the punishment of the offenders. But in that Councell at *Lyons* the Pope reserued all to himselfe, and outed others. *Caxton* his interpretation of *Higden*, maketh it plaine. *And after that time, no man shall haue leaue, to assigne his Tything, as hee did before, at his owne will, but all Tythings shall be paid to the mother Church.* And the very wordes expresse the meaning, *Nulli hominum*, not *Laicorum* onely, but euen *Episcoporum* also, plainely to exclude both Laie and Bishop, himselfe onely being excepted, who might dispense with his owne act: and so the Monkes are to bee vnderstood.

P. 148.

And further, hee telleth vs of the practise in the Diocesse of *Palencia* untill 1322. which was, that euery man wheresoeuer hee dwelt, yet might declare himselfe of what Parish hee would bee, and to that Parish onely giue his Tythes, which hee sayeth was remedied, by a Councell then at *Villadolid*.

Animad. 11.

But hee that shall reade that Canon, might obserue, that the reason of such abuse was, for that there as yet was no limitation of Parishes; so that each man by receiuing the communion at Easter, or as he list; might to any Church conuey his reall and personall Tythes, and other Parish duties: To remedie which disorder, this Legate inioyned within the space of a yeere the limitation of Parishes, by the Bishops or their Deputies, that so each Parishioner may know his owne Parish, and

and thereto both repaire, and pay his duties. This custome therefore cannot countenance the intention of the Author, in countreys where the limits of Parishes are certaine, as if therein men at any time might voluntarily diuert their Tythes lawfully to another Parish, as herein *England* by the next immediate quotation before, hee would inferre: So that herein is his fraud, to relate the *Custome*, but conceale the *Cause*. The whole Canon is long, or else it had beene worthy to haue beene recited, but it is extant in *Binnius Concil. Tom. 3. part. 2. pag. 1537.* whither I referre the diligent Reader.

In the next *Section*, the opinions are produced of the last 400. yeeres. In which he hath a commendable resolution. *That how euer very many other questions about the duetie of them are vsually disputed, yet resolute but this, by what Immediat Law, Tythes are payable, and most of the rest that follow about customes, appropriations, exemptions, and such more will soone haue little doubt.*

Pag. 150.

N B.

The opinion of the Canonists, that they are due, *quoad quotam De iure Diuino* is related, who yet allow the right of former Tythes Canonically settled by Consecrations, Appropriations, and Exemptions; for to those they require Pontificall confirmations or prescription. They acknowledge the Popes power in disposing them; they agree that all *prediall* or *mixt* Tythes are due parochially; but for *personall*, some doubt, for the whole Tenth or value. They admit no Customes, and *indeede no reason is* (saith the Authour, and truely) *that custome should take away, what God had immediatly and by his Morall Law established.* The others that admit other customes, speake not as Canonists, but as conforming the Canons to the Lawes where they liue. Some later say, they are due *De Iure Ecclesiastico*, and that no more *Ius naturale*, or *Diuinum morale* is in it, then what commands a competencie of meanes to be giuen to the Priesthood; so *Conarruias*, so some others: *But few enough are of this opinion*, saith hee: (Now let him professe he is not partiall.) They admit no feudall Tythes, as Canonists: They maintaine the distinction

The Canonists opinion.

N B.

ction of *Ius percipiendi*, and *Fructus Decimarum*.

Animad. 12.

Hence I onely obserue how his obiection of consecration to *Monasteries*, *Appropriation*, and *Exemptions*, being in practise, might stand with the opinion *De Iure Diuino*, since in these it did. And hence his inclination against the Divine Right appeares, since he thinkes too few oppose it.

The opinion
of Diuines.
Pag. 156.

The opinion of the Diuines is about the question, Whether Tythes are due *De Iure Diuino Morali*, to the Euangelicall Priesthood, that is, whether the Priests haue right to Tythes as to their inheritance in equall degree, as the Layman hath to his Nine; or whether by positive Law for their spirituall labour: whet. or by originall distributiue, or by commutative Iustice they are payable.

The Schoolemen.
Pag. 57.

The first opinion, is of the Schoole; That *quoad quotam*, the proportion of the Tenth, it is due by the positive Law; *quoad aliquotam*, for a portion of competencie, it is due by the Morall and Naturall Law of God.

Animad. 13.

This was a *politicke* and *pernitious* opinion.

22. q. 81. art. 1.
in corp.

Politick, For first it aimed at a greater proportion, for this was but instituted by the Church, saith *Aquinas secundum quandam humanitatem* in great fauour; that whereas they were bound to more, they might not giue lesse then the Iewes: yet so, that the Church of whose fauour they doubted not, might enioyne a greater quantitie, for a lesse they neuer yeelded to. *Alensis* his Conclusion, is worth the marking, *Fortē dicet aliquis quod in veteri Lege erat sic in precepto sed in noua Lege non est in precepto, quoad istam aliquotam: Sed contra, Ratio huius precepti in veteri Lege erat propter sustentationem ministrorum Domino seruientium sicut dicunt predictae auctoritates, Num. 18. Mal. 2. Cum igitur in noua lege maximè nunc temporis, multiplicentur ministri Ecclesie. Ergo nunc multò magis danda est aliqua aequalis vel etiam maior— Ergo ad hoc vel ad amplius tenentur Christiani, si volunt iam in regnum celorum intrare:* Perchance some will say, that in the olde Law Tythes were vnder a precept: but that it is not so in the Gospel for the proportion of the Tenth. But contrariwise, The reason of this precept

precept in the olde Law, was for the maintenance of the Minnisters that doe God seruice, as the authorities Num. 18. Malach. 3. whereas therefore in the new Law, especially now, the Ministers of the Church are encreased: Therefore now much more the same or a greater portion is to be giuen — Therefore to this, or to more, all Christians are bound that will enter into the kingdome of heauen.

If this be not contradiction concerning the right, or policie for a gaine of more, let them distinguish, that can. Besides he that will heare him prooue *Decimationem*, which is the *quota*, to be *de Lege Natura*, of the Law of Nature, *Videsit. p.4. q.2. M.2. Art. 5. §.4. in Resolutione*. Where the conclusion is, *Non cessauit sacramentum decimarum quia de Lege Naturam maximè fuit*. The sacrament of Tythes ceased not, because it was especially of the Law of Nature: and in many other places.

The *second policie*, was to defende their owne inioying Tythes, leauing a competent sustentation to a Vicar; which they thought due to him, *de Iure Diuino* for, *debent ministrantibus sacramenta beneficium competens assignare, quod si ista non fecerint raptores sunt & Decimas decernunt iniuste*. The religious must assigne a competent maintenance to them that administer the Sacraments, which if they doe not, they are as robbers and doe vniustly detaine Tythes, So *A'ensis*, Now if they had held the *quota de Iure Diuino*, then the *competens beneficium* would not haue serued, while they being Monkes and Friers, *Iure Ecclesiastico* might holde the rest. M.6. Art.2.

But as it was *politicke*, so it was *pernicious*. First occasioning the *heresie* of those that held them as Almes, as the *Mendicants* condemned by the Church (before *Wickleffe*) who from this opinion, and the aime to gaine to themselves, though by defrauding others,, began their falshood, as himselfe confesseth, pag. 166. And Secondly, thereby the Church lost the iurisdiction of Tythes, as in the *Arrest of Parliament* cited by him, pag. 181. Where the English of the French is, *The reason is, for that following the doctrine of S. Thomas Aquinas, wee hold that*

in the Law of grace, Tythes are due not by diuine, but by positive Law. And the Church, at first, was not owner of this right, but by the gift and grant of Kings, Princes, and others to whom that right did appertain. These were the good fruits of that Doctrine, such as vsually is of new inuentions.

Pag. 165.

Thirdly, Customes of payment of lesse, of nothing, and other Ciuill Tytles, as pag. 164. he acknowledgeth.

Animad. 14.

*Constitut. de
Decimis c. San-
cti S. compel-
lant.*

That the Schoole-men looked further into the question then the Canonists, is not probable, since the practise of the Canonists required their diligence, *Antonius de Butrio in Lindwood*, is of other minde. *Nota, inquit, per Ecclesiam declaratum est — quod decime debentur ex precepto Diuino, sileant propterea Theologi quia ad eos non spectat declarare*, Obserue, saith he, the Church hath declared Tythes to be due by the Law of God, let therefore the Diuines holde their peace, because it belongeth not to them to declare it.

Pag. 159.

In this opinion, the first question is concerning the first Authour of this Tenet, whether *Alensis*, or no? Hee saith no, but would haue it ancienter. Although the common ancient phrases were *Deus precepit*, and *Lex Diuina*, and the like, denoting the right of Tythes.

To prooue which, in the first place, hee setteth before vs his often sodden Coleworts, that the practise of consenting to such conueyances to Monasteries &c. could not agree with the opinion of Diuine right, Of this before too much.

Pag. 160.

Secondly, that some interpret, *Ius Diuinum* in those Writers, onely to import a Right exemplariter, by way of example, not obligatiue, as a binding Law. A poore shift to answer Gods præcept and his command.

*De Clericis lib.
1. cap. 24. S.
Altero modo.*

But yet St. *Ambrose* his authoritie is brought to direct the phrase, for, saith he, *Maior* (he might haue said *Bellarmino*) quoteth the phrase, *Quadragesima diuinitus constituta*, denoting onely the Ecclesiastick commandment of Lent.

Animad. 15.

But that *Maior* or *Bellarmino* should thinke out of this phrase, Lent to be but an Ecclesiastick commandment vpon example, sure is very strange, since *Bellarmino* out of the same

same phrase of the same Father doth hold it Apostolical, or instituted by Christ, *De verbo Dei scripto, lib. 4. cap. 9. § tertiæ reg.* but contradiction is not strange with Bellarmine, if it may auaille him. *Vide etiam Tom 3. de bonis oper. in partic. lib. 2. cap. 14. § Adde quod non.*

Thirdly, that *Ius Diuinum*, in the quæstion of Tythes, is to bee interpreted *Ius Ecclesiasticum*, and so hee would interpret the Fathers. Pag. 161.

But what if *Ius Diuinum*, when it is opposed *Humano* were so, what can *Deus præcepit*, God commanded, bee so vnderstood? or *Deus ordinauit*, God hath ordained? &c. But yet let vs obserue his quotations. Animad. 16.

In a Iudgement, *Tit. de præscrip Cap. 6. ad Aures.* There, in a case betweene two Parsons, the one claiming by parochiall Right, the other by præscription, Tythes in another Parish, the Pope approouing the Title of præscription, saith, *de Iure diuino & humano melior est conditio possidentis*, both by the Law diuine and humane, hee that is in possession, is in better case. Now there, *Iure diuino*, can signifie no other but humane Church Law.

What *humane*, and yet distinguished from humane? But else, saith he, *what hath the præscription of 40. yeeres of primer possession to doe with the direction of Diuine & Morall Law?* Yet, why may not that haue to doe heere with *ratione scandalæ*, for offence sake, which by the direction of the *Morall Law*, we must auoyd. And although he admitted præscription in Parochiall possession, must it therefore not bee true, that his opinion was of a Diuine right for the Clergie in generall? if he had admitted præscription against the Clergie, then it might haue beene doubted: but this case is otherwise. Animad. 17.

The next quotation, is of *Alexander Alensis*; The words are, *Decima sicut Domini generalis census, is payable iure Diuino.* P. 162. Part 3. q. 51.

That indeed is the sence, but the words are, *authoritate Diuina*, which alters his phrase. But hee there speaking of *Decime quo ad indeterminatam quantitatem*, (as euery man that hath vnderstanding, may obserue) cannot helpe the Au- m. 5. Animad. 18.

thour. His words are these, *Dicendum*, quod Ecclesia non percipit Decimas sicut communem prouentum, immo sicut censum Domini generalis, auctoritate Diuina, & ideo ab omni conditione, & debito est liberam stipendium Decimarum: I conclude, that the Church doeth not receiue Tithes as a common profit, but as the reuenue of the vniuersall Lord, by Diuine authoritie, and therefore the stipend of Tithes is free from all condition of debt. Now whether out of this, his intention may bee inferred, I appeale to his better thoughts: adding this, that *M.6. Art. 9.* hee saith, *De iure Canonico & Diuino est quod Decima soluantur*: Tithes are paid both by the Canonickall and Diuine right or Law: where Canonickall is distinguished from Diuine.

P. 162.

The third quotation is out of *Innocent the third*: And this is the olde Schoole obiection, and the late Iesuites argument.

Animal. 19.

For the better vnderstanding whereof to his obiection, haue patience to consider the Canon, which is in *Concil. Lateran. sub Innocent. 3. c. 53.* *In aliquibus regionibus quadam permixtae sunt gentes, quae secundum suos ritus, Decimas de more non soluant, quamuis censeantur nomine Christiano. His nonnulli Domini praediorum ea tribuunt excolenda, ut Decimis defraudantes Ecclesias maiores inde redditus assequantur. Volentes igitur super his Ecclesiarum indemnitatibus prouidere; Statuimus, ut ipsi Domini talibus personis, & taliter sua praedia excolenda committant. quod absque contradictione, Decimas Ecclesiis cum integritate persoluant; & ad id sine cesse fuerit, per censuram Ecclesiasticam compellantur: Illa quippe Decima necessario sunt soluenda, quae debentur ex lege Diuina, vel consuetudine loci approbata:* In some countreys there are certaine people mingled, who according to their cuttomes, pay not Tithes fashionably, although they are named Christians; To such, some Landlords demise their lands, that deceiuing the Church of Tithes, they may receiue the greater rents: Willing therefore to prouide for the Churches, that they bee not damnified; We ordaine, that such Landlords
doe

doe demise their lands to such Tenants, that without contradiction, will fully pay Tithes to the Church; and to that, if need be, they may be compelled by excommunication: *For those Tithes are necessarily to be payed, which are due by the Law of God, or the approoved custome of the place.*

The last sentence is the Question. The Canonists they indeed are mistaken, in referring the word, *Lege Diuina*, to *Prædiall Tithes*, due by the Law of God, and, *vel loci consuetudine approbata*, to *personall Tithes*; since it would crosse their owne opinion, and yet not agree with the case, which is *onely of prædiall*, as the wordes manifest. And the Authour also is not in the right; (let others iudge) when hee saith *cleerely the English of that was, Those are necessarily to bee payde which are due, Lege diuina, that is, by the positive law of the Church, which extendeth not alwayes vniuersally; or custome of the place.* Heerein I agree (as hee in his interpretation) not to suppose in those wordes a distinction of Tythes, but Lawes: which I gather from the word *necessario soluenda*, implying force of lawes: And if it had beene a distinction of Tythes, it should haue beene *Approbata*, not agreeing with *consuetudine* but *Decima*: And therefore I so English it, *Those Tythes are to bee payde which are due, Ex lege Diuina, by the law of God, which must binde Christians: vel loci consuetudine approbata, or the allowable custome of the place, which must constrain all people liuing in that place, euen contra Ritus suos, against their forraine customes, which they pretended, to pay Tythes.* And by this interpretation, *lege diuina* cannot signifie Ecclesiastick constitution, but diuine right, nor *Innocentius* be an Authour of the duenesse of Tythes, *De iure positino*, before *Alexander de Ales.* Which also might bee gathered, by his slighting euen their Christianitie for such rites and customes, *Although they bee named Christians*, as if scarce worthy they were of the Name, but his inferring personall Tythes to bee due by the Law of God, *Decret. Epist. lib. 2. pag. 544.* which is related, *De Decimis c. Tua Nobis.* putteth it out of all doubt, *vide Catalogum.*

P.
E. 163.
Erudit. Theol. de
sacram. l. 1. par.
11. cap. 4.

Neither *Hugo de Sancto Victore* whom next hee would make an Authour, doeth defend the positive right, and not a Divine. The wordes cited to make him of that opinion are: *Primum igitur ante Legem paruulos Consilio nutrit (Deus) postea sub Lege exercitatos precepto tentauit; nouissime sub gratia perfectos in libertate Spiritus ambulare permisit*, First therefore before the Law, God nourished his children by counsell; Then vnder the Law those that were more expert, hee tried them by a precept; and lastly, vnder grace hee left the perfect, to walke in the libertie of the spirit.

Animad. 20.

These are his wordes, yet he that shall consider, how in the wordes before in the same chapter, he supposeth, *Hominem ad hac exercendam à principio à Deo instructum & eruditum fuisse. Vnde enim homo rerum suarum Decimam quam Nonam, vel Octauam vel aliam quamque partem offerendam esse scire potuisset, nisi à Deo doctus fuisset*; That to the exercise of Tything from the beginning, man was instructed or taught by God; for how else should man know what part of his goods, either the eight or ninth part, or the tenth should bee offered, but onely being taught from God: And, that *Ex institutione diuina*, by diuine ordinance they are due to the Clergie in the Gospell, as; *De Sacramentis, lib. 2. p. 9. cap. 10.* which are quoted in the Catalogue; cannot make such inference out of his wordes, but rather a libertie to the more, as in (*Irenaeus* is insinuated) or of spirit in performance of the Law.

Lib. 4. cap. 34.

Num. 4.
P. 165.

The next Section is, Concerning their opinion, who accounted Tythes, *Almes*: But in this, because hee doeth not oppose the truth heere; (though concerning personall Tythes, both in his Preface, to countenance the Denise, how the Curates of London may be provided of sufficient lining. And pag. 174. to censure the determination of the Vniuersitie of Oxford, hee doth too much incline, to denie the Divine right:) I will adde nothing heere, onely recite the names of such of that opinion, namely, the *Mendicant Friers, Wickliffe, the Bohemians*;

ans, Gerardus Sagarellus, Erasmus, and William Russell the Franciscan.

The third opinion is in the next Section, of such as agree Pag. 168. with the Canonists, that the right of the Quota of Tythes is from the Morall or Diuine Law of God: Of whom (saith hee) some impudently vrge a command to Adam; some prouidently re- straine all their Arguments from Abrahams example referred to the application of it in the Epistle to the Hebrews; but others not so circumspectly taking in the Leuiticall commandment of Tythes.

Here is a *Diuision* without a *Distinction*; As if all that held the *Ius naturale* to be the right of the duety of Tythes, doe not thinke it Gods commandment to Adam, since that Law is eternall, *instinctu interiori licet non exterius lege data*, by inward motion, though not outwardly: Although no need of reuealing it in forme, vntill the manifestation of a Priesthood; and therefore all must be *Impudent*, or rather none: Or doe not they vrge the Commandements, though amongst, yet not of the Leuiticall Law; or if, not to ground a right, yet to shew a possession? By distinction therefore they must be stiled *Impudent*, and not so *circumspect*, as he would haue them. But since he acknowledgeth such *providence* in those who restrain their arguments to the Epistle to the Hebrewes, as those doe proue the rest, so should it haue made our Author so prouident, as not to oppose it. If Abraham payd Tythes to Melchisedec, as in that Epistle, then of duety or bountie; If of duety (for else the Apostles argument were vaine) then that is the naturall duety, and so no *impudencie* in auerring a command to Adam, which the Pœnitentiall next opposed doeth inferre; which is vindicated from his contempt, by that religious Knight Sir James Sempill; wherefore I passe it.

The next is the *Determination of the Vniuersitie of Oxford*, Anno 1427. against William Russell a Franciscan Fryer, adiudging him an Hereticke for denying personall Tythes to be due by the Law of God. Pag. 170.

This being produced at large, is taxed by him as vehement and Pag. 174.

and confident, and the truth of their Sentence is slighted thus, If Russell was therefore an Hereticke, doubtlesse he hath had, and now hath many fellow-heretickes; for thus, many, nay the most of them who curiously enquired herein, and diuers Canonists also which are for the Morall right of Prædiall and Mixt Tythes, deny that Personall are otherwise due regularly, then as Custome or Law positive which is subiect to custome, directs.

Animad. 22.

Hist. lib. 2. c. 11.

This censure ill becomes the tongue of such a mother; neither can the truth of that Sentence be slighted by those, who will iudge the Doctrinal deniall of any Tythes to be heresie, since the one as the other are due by the Law of God, and by those who will consider how *Lentardus* in *Glaber*, how the Mendicants in the Councell at *Vienna* 1340. as p. 166. *Wickliffe* in the Councell of *Constance*, were accounted and condemned for Hereticks, for denying the true right of Tythes: Besides the *Eustathians*, who were condemned in the Councell of *Gangra* for the like opinion of First fruits: Personall Tythes therefore, being iudged equall in right with Prædiall Tythes, the same Iudgement of the Vniuersitie of *Oxford* need not haue such names: neither should it be neglected by those many, who might well conceiue none to be more vnpartiall and able Iudges, then they were and are; and sure they will not retract that *Determination*.

But whereas he saith, Many, nay the most of such as most curiously enquire herein, besides diuers Canonists are of that opinion:

By the curious Inquisitors, sure he meanes the Schoolemen, of whom in the Preface, p. 3. hee said, *This question is handled fully by diuers Schoolemen, who, as p. 165. looked further into all they meddled with, then the Canonists could doe.* Now of their opinion, let vs heare his owne confession, pag. 263. By this first opinion of the Schoole men — no difference is to be made of Prædiall, Mixt, and Personall Tythes, howsoeuer some scruples about that difference haue beene needlesly handled by them, for quoad substantiam Decimæ --- both are equally due; The Morall Law, according to them, designs not our reall possessions to be more subiect here, then personall profit. The Schoole-men therefore

fore are against *Russell*, and all those *many*, euen by his confession.

And although amongst the *Canonists*, some, who being puzzled with the interpretation of the Canon *In aliquibus Regionibus, Extr. de Decimis, cap. 32.* out of the Councell of *Lateran* vnder *Innocent* the 3. haue so taught; yet the ancients, *Innocentius 4. Speculator, &c.* as they are cited by him, p. 152. are of other minde, *Innocentius 4.* making it a wonder to see any denie it: Others, afterwards conforming their opinion to the pleasure of the times and places wherein they practised, admitted the interpretation of the aforesaid Canon against the Diuine right of personal Tythes; which, to auoid scandall, was tolerated perforce by the secular Clergie; And by some *Monks* not much stood vpon in their writings, because vsually by *Compositions* and *ordinations*, such Tithes were passed to their Vicars in their appropriations, and themselues had no benefit thereof.

But for conclusion, Hethat shall consider the first Tythe paid: to bee a personall Tythe, as that of *Manubie* (if no more) by *Abraham*, the generall claime of all Tythes, *Exodus 22. Malachie 3. Deuteronom. 12.* and *Sanctifica Domino secundum quod donatum, Ecclesiastici. 33.* to omit both Fathers and Canons: Besides the reasons, *The acknowledgement of Gods dominion ouer mee*, as well as ouer mine: *The duty of my thankfulnessse*, as well for the increase of my strength and skill, as from my field and cartell; for if *Redde pluenti, redde serenanti* Giue to him that giues raine, to him that giues faire weather, why not, *Redde vinificanti*, Giue to him that giues life; *confirmanti*, that giues strength, *docenti*, that giues instruction, *benedicenti*, that giues a blessing? *The care of sustentation of the Ministers*, is it not as much by one as other? *The expectation of a blessing*, is it not alike vpon the one as other? Who dare then, through couetousnesse by maintenance in Doctrine, make his Sacriledge hæreticall, and vndergoe the censure of the Church and Vniuersitie as that *Russell* did? But neither my aime nor leisure is to determine *questions*

August. Ser. de Temp. 219.

stions; but onely to shew the rashnesse of this censure vpon the determination of the *Uniuersitie of Oxford*, to which also her sister *Cambridge* did subscribe. And onely out of it, I will offer this Sentence for a conclusion, *Nimis cruenta ac sacrilega isthac auaritia, quæ antiquissimi Iuris decimale debitum, solum consuetudini ascribit & in dubium reuocat, ut laborantium victum iuste exhauriat: Quod Ministris Ecclesiæ ad eorum honestam sustentationem firmum persisteret, si decimæ possunt ad libitum conferri, & Ius decimandi ex debito non esset?* That is too cruell and sacrilegious a couetousnesse, which doth ascribe the duty of Tythes beeing of most ancient right to custome alone; and that quæstion them, to take away the maintenance of the labourer, for what certaintie should the minister haue for his priestly maintenance, if Tythes may be payed at will and if the right of Tything be not of dutie?

175.

From the authorities of particulars, he proceeds to Councils, and more generall assemblies, which defende the diuine right.

Pag. 176.

Animad. 23.
Confes. lib. 1.
cap. 16.

The Section following is of customes against the right.

Hom. 19. ad pop.

Of these I may well exclaime, as *St. Augustine* doth, *Va tibi flumen moris humani quis resistet tibi? quamdiu non siccaberis?* Woe to thee thou flood of custome, who shall resist thee? how long will it be before thou bee dried vp? or answere with *St. Chrysostome*, *Ne mihi iam aliquis consuetudinem prætendat, propterea enim indignor & irascor quoniam consuetudinem vincere non possum.* Let no man obiect to mee custome, for therefore I grieue and am vexed, because I cannot ouercome custome: And with powerfull *Tertullian* conclude, *Veritas est, cui præscribere non potest, nec spatium temporum, nec patrocinatio personarum, nec priuilegium Regionum*, Trueth is such, as

De rebandis
virginibus.

neither the distance of time, nor greatnesse of persons, nor the priuiledges of kingdomes can præscribe against. And the reasons of such customes, first, let *Alchwin* tell, related by him pag. 71. *Auara mens hominum decimarum largitati non consentit*, The couetous minde, doth not consent to the liberalitie of Tythes. Secondly, let *St. Lewis* of France tell, cited by him

pag.

pag. the next, *per malitiam inhabitantium defraudata*, defrauded by the malice of inhabitants; *Thirdly*, let *Abbo*, as *Aimoinus* in his life, cap.8. *Quo nos ducit cupiditas dum refrigescit charitas*, Whither doth gaine driue vs when charitie is cold? P.177. Nay, let our Authour tell, that the Common Law neuer gaue way herein to the Canon Law.

Now whether the Canon or common Law ought most to binde the conscience, and in these things ought to be followed, wherein Gods right is prætended, iudge any; the *Canons* being made to direct *the conscience*, (which is onely subiect to their censure) and the *Lawes* to prouide the Temporal good of the subiect, which may be diuers; for, *Aliud Ius Fori, aliud Cæli*, There is one Law of the Barre, another of heauen, as Saint *Augustine*: and, *Alie sunt Leges Cesarum, alie Christi, aliud Papinianus, aliud Paulus præcipit*, as Saint *Hierome*: The Lawes of Christ and *Cesar* are different, and the præcepts of *Paul* and *Papinian* are not alike.

Inter Serm. 90, serm. 49.

In Epitaph. Fabiola ad Oceanum.

P. 193. *Animad. 24.*

And so much of Customes: onely adding this coniecture concerning the *Appropriation* to Giseburne by Robert de Bruis, that it may be (for ought hee produceth) rather the Founder of that Monastery in King *Stephens* time, as he teacheth me, Pag. 309. which was before the Councell of *Lateran*, then any after of that name, to make such an irregular conueiance, when he might not doe it (euen by the saying of the Lawyers, who pitch the time vpon the Councell of *Lateran*, 1215. or of the three Monkes, who vpon the Councell of *Lyons*, 1774.) vnlesse the Popes authoritie were obtained, and so it could not be arbitrary to whom alone such priuiledge was reserued, before the yeere 1290. vpon which he placeth this *Appropriation*.

ANIMADVERSIONS on the eighth Chapter.

P. 196.



IN this Chapter is an industrious collection of the *Lawes, Councels, Nationall and Provinciall, or by the Pope, Petitions or Bills of Parliament* concerning Tithes in this kingdom of England: out of which in the Catalogue many are selected to prooue the Diuine right.

And to these may be added; that *Law* in the time of *Augustine the Monke*, remembred by *Edward the Confessor* in his *Lawes*, where speaking of Tithes in particular, he addeth, *Hec enim predicauit beatus Augustinus, & concessa sunt à Rege, Baronibus & populo*: These things *Saint Augustine* preached, and they were granted by the King, the Barons, and the people; this no doubt in a Parliament.

And in the dayes of *Henry the first*, a Councell vnder *William the Archbishop*, anno 1129. there it is decreed, *Decimas sicut Dei summi Dominicas, ex integro reddi precipimus*: We command Tithes fully to bee payed, as the Demesnes of God. *Ex continuatore Florentij Wigorniensis*.

In lib. Ms.

And in the dayes of *Roger Niger* Bishop of London, that Statute betweene the Archdeacon and Rectors in the city of London, where it is said, *Detentores Decimarum sententiâ innodentur*: Let the detainers of Tithes be excommunicated. And after, vnder a Title *De Excommunicatione pro Decimis*, is this Statute, *Tribus verò diebus Dominicis, post Natale Sancti Iohannis Baptistæ, in omnibus Ecclesiis à Capellano annuatim publicè fiat inhibitiò sub pœna Excommunicationis, ne quis, prædiorum siue gardinorum Decimam fructuum asportet, vel asportari faciat, nisi primò Ecclesiæ Parochiali competenter inde fuerit satisfactum*. Other passages vnder him, are in answere to

Mr. Sel-

Mr. Seldens Preface produced, where this is Englished.

By remembrance whereof, a passage in this Chapter is to be considered, whereby he would sample *the custome in London in paying Tythes; Saying, First, before the Acts or Decrees of Roger Niger (as I haue heard, saith he, that of the LII. Farthings in Lindwood to haue been:) that no Tythes as Tythes, were generally paid in that citie.* P. 244.

But how vntrue that is, obserue what is answered against his Preface, *ad p. 9, &c.* Animad. 1.

Secondly, He cannot but heere remember, *the custome of the Easterne Church thus maintained, chiefly with offerings or Canonica as they call them, which specially appeareth in the answer of Theodore Balsamon Patriarch of Antioch, to Marke Patriarch of Alexandria, touching the quantitie of what was to bee offered: He telleth him that no certaine quantitie is appointed by the Canons, and that through inequality of mens estate (none of them giuing any such part to the Church, as that it could discover their abilitie) which permitteth not a regular certainty, they were contented with what custome, & the bountie of the giuers bestowed.* P. 245. Iur. Græc-Rom. in Resp. 57.

Here let him remember how he said pag. 67. *that no lawes in the Easterne Church doe mention them*, And in this place obserue, how here he supposeth the maintenance of the Clergie there, to be Arbitrarie and meane. But the State of that Church was as farre as I can yet collect, thus. There were *Debita a Laicis primitiæ*, First fruits due from the Laitie, as *Nicolaus Grammaticus* witnesseth, in his Synodall sentence, (vnder which why not Tythes comprehended?) which were stiled *Canonica* by *Isaacus*, and *Alexius Comneni* in their *Aurea Bulla*; and these were *a Laicorum quolibet exigenda pro more facultatum cuiusque, ac Reuerendissimis Sacerdotibus præstandæ*, To be exacted of euery Lay man, according to his abilitie, and to be paid to the most reuerend Priests: which because the Priests might appoint to bee paid, either in money or kind, *Cunctis in Locis atque vrbibus citra vllum impedimentum obseruarentur*, might easily bee obserued in all cities and places. All this is in that his Synodall sentence, who was the Animad. 2.

Iuris Græc-Rom. pag. 269. Ib. p. 121. & 123.

first that intermedled therein. Whence it appeareth how wrongfully our Authour calleth them onely *offerings*, and saith, that a *regular certaintie was not due*, when they are *Debita* and *Exigenda*, *Due* and to be exacted.

In Resp. 57. in
lib. citat. p. 390.

Page. 391.

But hee followeth *Balsamon*, whose wordes are thus by *Leunclavius* translated, wherby will appeare the *libertie* of the *Priests*, to require them, if they had knowen them, whereas if they were *free-will offerings*, they might not have required them. The words first of the *Question* are these, *Quæ & qualia sunt Canonica quæ Sacerdotibus & pontificibus quotannis dantur?* What, and of what sort are the *Canonica*, which are yeerely giuen to the *Priests* and *Bishops*? The words of *Balsamons* answer; *De quantitate autem quæ pro Canonario danda est a plebeijs, Canones quidem nihil definiunt, verum Iussio Inclyti Imperatoris Illius Isaacij Comneni, formam designat quarundam, quæ Episcopis dantur a Laicis qui sedes in eorum Diocesi-bus stabilierunt: Quoniam rerum irregularitas & indulgentia horum occultauit descriptionem, (multesimam enim eorum partem Episcopo nemo dat) contenti sumus consuetudine & dantiunz liberalitate.* Concerning the quantitie of the *Canonicum*, which is giuen by the people, the *Canons* define nothing: But the *Edict* of *Isaacijs Comnenus*, setteth downe a forme, what by *Laic* men of the *Diocesses*, are giuen to *Bishops*. But because the inequality of things, and fauour, hath hidden the truth thereof (for *Bishops* receiue not a great part of them) wee are contented with custome, and the liberalitie of the giuers. Because they knew not, they were so contented, whereas else they had a *regular certaintie due*.

So that their case is not like the *London Ministers*, who demaund onely the regular part of what is and may bee knowne, euen by set rents: Yet also you must obserue that this *Canonica* was for the *Bishop* alone, vnlesse you will imagine, that as yet no *Parochiall* right was there established, and that all the estate was in the *Bishop*; which indeede for ought I read is true. Yet that this *Canonica* was a set quantitie is euen by the signification of the word *certaine*: Like
that

that in *Agobardus* his booke *Contra Insulsam opinionem vulgi de Grandine & Tonitruo*, which the foolish people gaue their *Tempestarij*, those Priests of the witches. *Habent Statutum quantum quod de frugibus suis donant & appellant hoc Canonicum*, They giue them a certaine portion of corne which they call *Canonicum*: which yet there hee opposeth to rightfull Tything. Pag. 155.

But yet further, by the *Aurea Bulla* of *Isaacus Comnenus*, the ancient proportion of the Easterne Church before, is not to be considered; since as *Zonaras* speaketh of him, *Progressu temporis numen etiam violare ausus, multa Monasterijs consecrata truncavit* — *Sumptibus necessarijs duntaxat illis relictis, ceteris vero fisco attributis*: After, he became impious, he cut off many things consecrated to Monasteries, (which there, were Colledges of Priests) and onely leauing them euen necessarie expences, hee confiscated the rest. But how they haue beene claimed and named in the Easterne Church, the Greek Authors in the Catalogue may declare, and how at that time at *Constantinople* Tythes by name were paid; Reade *Innocent* the 3. and before him, the testimonie of *Humbertus*, Annal. rom. 3. who wrote against the Greekes: and before him, *Anastasius* the Abbot, who liued about the yeere 860. who in his booke *contra Iudeos*, saith there, that *Laici solent dare Decimas Sacerdotibus*; The Lay-men vsed to pay Tythes to the Priests. Decretal. Et 3. lib. 1. p. 63.

And so much for the Maintenance of the Easterne Church, concerning which the Statute of *Roger Niger* added, gaue me occasion to preuent the order of the Authors leaues.

Adding this, that where *Antoninus* is produced, pag. 190. in *part. 4. Tit. 11.* to iustifie the generall non-paiment of them in the Easterne Church, as a thing not to be censured to be against Gods Law; The Reader must vnderstand, first, that our Authors quotation both there, and pag. 187. is negligently exprest, for it should haue beene *part. 2. Tit. 4. § 6.* And secondly, that *Antoninus* holdeth with the Schoolemen, whose opinion occasioned Customes, and admitteth them. Yet lastly, that they by his opinion, are no further free from censure to do against Gods Animad. 3.

In prior Epist.
ad Tim. Digres.
lib. 2. cap. 8.

Gods Law in not paying, but onely, *quia non petat Ecclesia*, because the Church to auoide scandall, doeth not demand them; which if it did, all the olde Schoolemen, and Antonine is of opinion, that then it were sinne not to pay. Now concerning the duty of demanding, let me onely remember the saying of a moderate Papist, *Claudius Espencaus; Simili casu Ecclesia Decimas modo differt exigere, modo simpliciter non petit, si quibus in locis solui non consueverunt, ne fideles inassueti & infirmi incidant in scandalum, aut auertantur à fide. Verum iuri ita suo cedere non semper expedit: ut enim scandalum pusillorum ex infirmitate vel ignorantia ortum totali temporalium dimissione sedandum sit, non tamen ex malitia natum quod Pharisæorum vocant, nec propter homines malitiosè scandala concitantes, temporalia quorum sumus Domini, tribuenda aut non repetenda; quanto minus quorum sumus depositarij atque conseruatores, siue Reip. Rectores si communia ea fuerint, siue Ecclesia pastores, si sacra.*

And so I returne to vindicate two English Councils in this Chapter before, from his Exceptions.

Pag. 197.

The first, of Egbert Archbishop of Yorke, who died anno 766. out of his *Mss. Excerptions in Thesauro Cottoniano*. This Title must undergoe censure (quoth he) 1. Because in that Collection some whole constitutions occurre in the same syllables as they are in the Capitularies of Charles the Great, which could not be knowne to Egbert, who died in the last yeeres of Pipin the father to Charles.

Viti Edit. c. 7.
Leg. Longobard.
lib. 3. tit. 8. (it
should be) 3.

2. Because the words, *Secundum Canonicam auctoritatem decimas coram testibus diuidant*, which are quoted in this Canon for Tythes, may shew these Excerptions not to be so ancient; for the ancientest *Canonica auctoritas*, for diuiding Tythes before witnesse, is an olde Imperiall, attributed in some Editions to the 11. of Charles the great being King of France; In others, to Emperour Lotharius the first: but both these are after Egbert, therefore the Canon not his.

3. The heads of a Synode vnder him are extant; but not any expresse mention is found in them of Tythes, although most of the particulars of Church gouernment are touched.

Before

Before I make answer to his *Exceptions*, the Author and the Reader may take notice out of *Bale*, that these *Excerptions* were not collected by *Egbert*, but out of him by *Hucarius Lenita* about the yeere 1040, *qui redegit in compendium constitutiones Egberti*, who epitomised the Constitutions of *Egbert*: Wherefore the first exception well may have answer, and admitteth excuse from the use of the middle times, which often inserted into one bodie, and under one name, Lawes of different Ages, which in this, being written, as he coniectureth, in the daies of Henry the first, might happen. But accepting his answer, let vs consider whether this Canon be inserted, and of a later brood.

*Animad. 4.
De script. Brit.*

This he would inferre by his *second exception*, in that the *ancientest Canonica autoritas ut diuidant coram testibus*, is later then *Egbert*: as by the Canon in two places quoted (being in both the same) doth appeare. But if in neither of the quotations there is such authoritie for such diuision, to the ornament of the Church, the poore, the Clergie: nor no such word of *diuissio coram testibus*, but onely an enquirie betweene the Parson and Parishioners, *coram testibus*, before witnesse, whether they were paide, *ubi data vel non data*, and no word *de diuiddendo*: is this then a fit censure? Nay secondly, if an *ancienter Canonica autoritas* may be shewed of diuiding *coram testibus*; as in the Councell of *Antioch*, *can. 24.* There, *sint manifesta quæ ad Ecclesiam pertinent cum cognitione Presbyterorum & Diaconorum quæ sunt circa eum, ut sciant & non ignorent*, let the goods of the Church be knowen to the Priests and Deacons what they are. But more plainely in the decretall Epistle of *Gelasius* 1. *cap. 29.* There, in the diuision of that to the poore, he saith, *Quamuis diuinis rationibus se dispensasse monstraturus videretur, tamen, iuxta quod scriptum est, ut videant opera vestra, oportet præsentis testificatione predicari &c.* Although hee must giue an account to God, yet, that men may see your good workes, let it bee proclaimed before witnesse. Besides a Canon attributed to the Councell at *Araerne Anno 535.* *Licetum sit Episcopis, præsentibus Presbyteris*

teris & Diaconibus, de thesauro Ecclesie familie & pauperibus eiusdem Ecclesie secundum Canonicam institutionem, (note the phrase) iuxta quod indiguerint erogare: Le the Bishops in the presence of Priests and Deacons giue vnto the poore out of the treasure of the Church, and to his familie, according to the Canonick constitution, what they neede. And this very Canon is repeated in *Concilio Turonensi, Anno 813.* euen vnder *Charlemaine*. Where yet, the *Canonica institutio* hath not reference to the persons before whom, but to the vses vpon which. Is not the second therefore a strange exception, wherein neither quotation, nor obseruation is true? And are not the Excerptions of *Egbert* wronged?

As for the third Exception before repeated, it is meere coniecturall: And because in such heads in the generall word *oblations, Offerings, redditus reuenue, facultates Ecclesie, Estate of the Church, and such like, Tythes* may be, and no doubt were signified, the Exception is very insufficient, being both on coniecture, and from a negatiue: especially, since hee doth not cite any head of a Canon touching Church reuenue, which either in generall termes, or in particular with an *&c.* might demonstrate the truth of his relation.

But a good authoritie for the iustifying of *Egberts Excerptions* is, for that in the booke *Statuta Synodorum* that belonged to *St Augustines in Canturbury*, written about *Anno 900.* and collected, before the same words are quoted as out of a *former Synode*, as *himselſe* relateth, pag. 212.

Pag. 198.

The second Councill or Canon to bee vindicated, is the *Synodus Anglicana ad Ann. 786.* vnder the two Legates of *Adrian the first*, cited by the *Centurie Writers Tom. 8. cap. 9. pag. 583. edition. Basil. 1567.*

The Exception is, for that in the relation of the Legates to the Prope, mention is of *Kenulph King of West Saxonie his ioyning with Offa in calling the Councell, but the confirmations of the decrees haue no reference vnto him. But by storie and synchronisme Kenulph perhaps could not haue at all to doe with it, for*
some

some of our old Monkes expressly affirme, that in the second yeere of Brithric next Successor after Kenulphs death, Pope Adrian sent his Legates — How could Kenulph be there then as the Legates relate? Therefore after hee saith doubtingly, if it be of sufficient credit.

But for antwere. This Law if of good authoritie, being a most observable Law, beeing made with such solemnitie by both powers of both States of Mercland and Northumberland, which tooke up a very great part of England, and it is likely, it was made generall to all England: is onely discredited by perhaps, and the relation of some of our Monkes (amongst whom, who are quoted, Ethelwerd Lib. 2. cap. 20. saith nothing:) of whose relation and trueth, heare what himselfe saith: *Beleeue the Monkes as you will: but indeed an exactnesse heere is not easily extracted out of the disturbed times of our Chronicles.* The Monkes of no absolute credit, the time of no exact calculation: and yet there must be a doubt of such a Synode, whereof he giueth this testimony, *That it cannot be suspected by any circumstance in the subscriptions, which being many might haue by chance soone got amongst them a character of falsehood, had it not beene genuine.* If this dealing shew not a will of Censure and contradiction in the Authour, let the Reader iudge. But the Centurie writers, for all their infinite paines, as pag. 53. they haue ignorance and erring, and ridiculous opinion layd vpon them, but vniustly; so here their labour is suspected.

After these Councils, in the fourth number is the Acte of King Ethelulph by his Charter enquired of, wherein as *In-* Num. 4.
Pag. 204. *guiphus* relateth it, he saith, *Cum consilio*, (not *concilio* as our Authour repeateh it: *Episcoporum, ac Principum meorum*, — *affirmantes consensimus ut aliquam portionem terrarum hereditariam antea possidentibus omnibus gradibus, siue famulis & famulabus Dei, Deo seruientibus, siue Laicis miseris, semper decimam Mansionem ubi minimum sit tum decimam partem omnium bonorum in libertatem perpetuam donari sanctæ Ecclesiæ dyndicauit, ut sit tuta & munita ab omnibus secularibus seruientibus, &c.* This is almost in the same words related by *Malmesburiensis*,

who calleth it, *Scriptum libertatis Ecclesiarum*: Matthew Westminster relateth it, *Portionem terræ meæ— iure perpetuo possidendam, concedam, decimam scilicet partem terræ meæ, ut sit tuta, &c.* The Chartularies of Abingdon, whereof one hath this Title, *Quomodo Adelulfus Rex dedit decimam Regni sui Ecclesiis*, hath it thus, *Perfeci, ut decimam partem terrarum per Regnum nostrum, non solum Ecclesiis darem, verum etiam & Ministris nostris in eadem constitutis, in perpetuam libertatem habere concessimus, &c.*

Ingulphus to the Charter related by him, adds, *That by the free consent of the Bishops, and Princes that were under him, of all the Provinces of England, Tunc primò cum Decimis omnium terrarum ac bonorum aliorum, siue catallorum vniuersam dotauit Ecclesiam Anglicanam, per suum Regnum chirographum.*

Since out of the Charter it is hard to collect, what the exact meaning was; yet by the words of Ingulphus, he doeth coniecture pag. 206. that the purpose of the Charter was to make a generall graunt of Tithes payable freely, because it seemes before, that the payment of all Tithes had commonly beene omitted, Pag. 207.

Asimad. 6.

But that this Grant was of the tenth part of Lands, not of Tithes properly, besides the words of the Charters, which doe naturally beare that sense: Obserue these Reasons and authorities.

First, Ethelulph could not giue that first, which was giuen before; But Ethelbert and his Parliament gaue them vpon the preaching of Augustine the Monke, aboue 200. yeeres before, as I haue produced in the beginning of this Chapter: King Offa of Mercland grants them, in subscribing to the Councell before, Pag. 201. as also Ælfwold King of Northumberland, when hee and his Nobles, and people, to whom the Canon was proposed, *Se in omnibus custodire deuouerunt*, Pag. 200.

Whence also a second reason doeth proceed, since those Kings gaue Tithes properly, and that not onely themselues,
but

but also in their subiects, and so should giue more then *Ethelulph*, who gaue but this *Decima* of his owne land of inheritance: which may appeare, for that he passeth it onely *per Regium Chirographum* by his royall Charter alone, and no Act of Parliament; and *De omni possessione sua*, saith *Ethelwerd*; and by the word *hereditariam* in the Charter, and in his *Testament in Florence of Worcester*, and by some other coniectures. But *Ethelulph* in this Graunt is magnified, as doing some Extraordinariething, for therefore *King Edgar* in his *Oration* to the Clergie, relating the bountie of his Ancestours to the Church, saith *Proavus meus ut scitis totam terram suam Ecclesiis & Monasteriis decimavit*, And *Malmesburiensis*, *de gestis Pontificum* lib. 2. pag. 242. saith, *Tum vero palam erat, quod eum spiritualis Philosophia docuisset, dum magis famulorum Dei quam suis utilitatibus prospiciens, omne Regnum suum Deo decimaret.* In this appeared the fruit of his *Monastick* profession, in that he gaue this, And in commendation heereof write many other. Therefore this was more then Tythes.

Alfred. Rhieuall.
in Biblioth.
Patr. Tom. 13.
p. 154.

Thirdly, *Ethelulph* neede not haue asked the consent of his Bishops and Nobles, to giue Tythes out of his owne lands, though it might seeme requisite to conuey so much land; therefore it was some greater matter then Tythes.

Fourthly, *Ethelulph* gaue such a *Decima* which was liable, not onely to Taxes and Exactions of State then, but also to that *Trinoda necessitas*, of *Pontis Extructio*, *Expeditio & arcis munitio*, But lands onely I suppose, and not annuall profits were liable to such seruice; Therefore his Charter was of Lands.

Besides fifthly, against our Authour, if then *Ethelulph* gaue the Tythes of *prediall* and *mixt* profits, and the Tythe of *every mans* personall possessions, were at that time also included in the gift; then how could there bee any newly consecrated Tythes after, as out of *Chartularies*, in his eleuenth chapter hee would proue, since all were now giuen.

Sixtly, If Monasteries and Nunneries (for so the *Charter* and *Edgars* speech doe expresse) at that time did not inioy Tythes, then it is not probable he gaue them. But in all his *Historie* he hath proposed none, nay presuppoeth none to haue bin long after that time no not annexed to Parish Churches. Therefore he gaue them not.

But to passe from reason to authoritie;

De gestis Al-
fredi.

Asser Meneuensis liued in *Alfreds* time, the sonne of this *Ethelulph*, and was his Tutor : He relateth it thus; *Ethelulphus Rex decimam totius regni sui partem ab omni Regali seruitio & tributo liberauit, &c.* In the same wordes wherein *Florence of Worcester*, and *Houeden* follow him, and hee might best know the truth and expresse it. But let *Ethelulph* himse fe be his owne interpreter, first in a Charter of his, concerning land giuen to *Diuna*, then *Bishop of Rochester*, where the words are, *Ego Ethelwulfus Rex Occidentalium Saxonum necnon & Cantuariorum pro decimatione agrorum quam Deo donante ceteris Ministris meis facere decreui. Tibi Diunæ Ministro meo dabo unam villā quod nos Saxonice An Haga dicimus in Meridie Castelli Hrobi, & decem iugera a meridiana plaga villuli illius adiacentia—— quod hoc ipsum tibi adhibendum & possidendum concedendo mandamus, ut post dies tuos cuicunque heredi tibi placuerit derelinquendam cum plena libertate habeas potestatem. Anno 855. Indict. 3. hoc est, diuina gratia largiente quando ultra mare Romam perrexi*, In this it is manifest that lands, and not Tythes were giuen to *Diuna*. for the Tything he intended to giue to other his Bishops. So that whether this *Pro decimatione*, be for his part of the Tythe, or in lieu of his Tythes, Tythes properly and in kind were not giuen; it would be rather a Commutation then Donation : But neither this Land giuen *pro Decimatione Agrorum*, is not perpetually annexed to him or his Church, but that hee might freely passe it away, *cuiunque heredi voluerit*, to whom he pleased.

In Textu Ros-
fens. & in chart.
Episc. Rossens.

2. Let *Ethelulphs Will and Testament* related by *Florence of Worcester* ad annum 855 be considered, whence some words of

of the Charter, (*sive Laicis miseris semper Decimam mansionem*) may haue interpretation, and by them the rest: The wordes are, *Pro utilitate anime sue — per omnem hereditariam terram suam semper in Decem Mautentibus unum pauperem, aut indigentiam aut peregrinum, cibo potu vestimento, successoribus suis usq̃ ad ultimum diem iudicii post se pascere præcepit*; so then, *Decima Mansio* was Reall and continuall: why therefore the wordes, *Aliqua portio terrarum*, whereof the other designe but a part, should be but annuall?

And then it it be considered that the same *Ethelulph* was a *Monke*, nay as by others it is related, euen a *Bishop*; and by this manifested *quod eum spiritualis Philosophia docuisset*, that he well expresse his Monasticke learning, besides the reason he giues, to obtaine victorie of his enemies, and of his soules health; I hope it will not seeme so vnprobable, since King *Offa*, who had lesse reason, gaue the tenth part of his Estate, as our Author here citeth out of *Polydore Virgil*, and *Alured* the sonne of this *Ethelulph* gaue the 4. part of his state vnto them. as *Asser Menenensis*, and *Malmesbury de gest. Reg. Ang.* *De gest. Alfred.* lib. 2. cap. 4. testifie.

And lastly, if we consider that the words of all the Authors, who anciently expresse it, (euen those of *Ingulphus*, *Cum Decimis omnium terrarum ac bonorum aliorum sive catallorum, &c.*) doe in the naturall signification import, no *emanation*, but *partition*; neither can by any other sense, but in the *donation* of lands, agree amongst themselues, and with other Authors and Charters: And further, it being vnderstood, that the reason of sending the Charters to be published in every Parish Church, was, that they might take notice of the Seruice and Prayers which by this Charter he enioyned to be said for him in all Churches: I hope my opinion (whereto both that worthy Minister of Christ *John Fox* and his and our vnworthy aduersarie the *Iesuit Parsons*, both well skilled in the Stories of our Countrey, doe giue expresse testimonie) may not be thought vnprobable if not true.

In his 3. Con-
uictions.

And this onely for the Chapter of Lawes; giuing notice
to

to Mr. Selden, that part of the Preface cited out of *Statuta Synodorum*, a booke so called by him, pag. 211. *Ha sunt quatuor principales Synodi, &c.* are in the Preface of *Isidore* to his Edition let out by *Iacobus Merlinus*.

ANIMADVERSIONS on the ninth Chapter.

Pag. 249.



He next Chapter making entrance to the Practise, beginneth with the consideration of the originall of Parishes; and that first, in the *Britons* time. Where first, he presenteth with scorn the Tale of *S. Augustine the Monke* his preaching at *Cometon* in *Oxfordshire*, and of the *Parson* there: Of which in the next Chapter.

Num. 1.

The next is of *Dubritius* first *Bishop* of *Landaffe*, out of the ancient Monuments of that Church; of the gift of Churches with Tythes to him about the yeere 490. But here supposing *no Parishes at that time*, he thinketh the Author, whose writing he iudgeth not about 400. yeeres olde, spake according to the stile of his time.

Animad. 1.

But that heere, as in France were Churches, *cum appenditijs & cum decimis*, is probable. And that there were in France the Testament of *S. Remigius*, who was ordered *Bishop* anno 470. in *Flodoardus*, may witnesse; and long before that, was the diuision of Parishes by *Pope Dionysius*. And that before *S. Augustine the Monke*, here were Churches, the phrase of

Hist. Rhemens.
lib. 1. cap. 18.

Histor. l. 1. c. 26.

Ecclesias fabricandi vel restaurandi, of building or repairing Churches, in *Beda*, speaking of their request to the King, may insinuate; which whether they were Parish Churches or no, I know not. Yet I could be willing that Monument, as that of that Church (called I thinke *Tile* from *S. Teliau* the next succellour of *Dubritius*) might be freed from falsehood, though in the argument against him, it auaieth mee nothing,

nothing, whether they were so soone annexed to *Parish Church* or *Bishop*, since in both, the possession of the Clergie is defended. Churches were giuen to Monasteries before the yeere 600, as in *Italie* by one *Tertullus* to the Monasterie in *Monte Casini*, in the 5. yeere of *Iustinus* the Emperour, Olympiade 326. This grant was confirmed after by *Gregory* the great. *Post chron. Ca-*
sinens. p. 769.
& 790.

Next for the time of the Saxons, he sayth, that in *S. Augu-* *Num. 2.*
stines time there were no *Parochiall Churches*, nor for a hundred
yeeres after: and this he coniectureth out of *Bede*.

Concerning this, I will maintaine no controuersie; 256.
Though his reason opposed to the opinion of *Archbishop*
Parker, or *Mr. Iosceline*, who thought *Honorius* the fourth
Succellour of *Augustine* did distinguish *Parishes*, bee vaine:
Because (saith he) it could not extend to all his *Prouince*, *Sussex* *Num. 3.*
258.
being not conuerted.

What then? Might not he be saide to distinguish all his
Prouincethen, because he did not *Sussex*, for that that was *Animad. 2.*
not of his *Prouince*? No *Prouinciall Iurisdiction* without
Christianitie; but therein not vntill after *Honorius* time
Christianitie was embraced: therefore the reason is friuo-
lous. But whether *Honorius* diuided *Parishes* as now they
be, or onely *Bishopricks*, as he would haue it, I will not inter-
pose my slender iudgement, though I may well be perswa-
ded, that great Antiquarie *Mr. Iosceline*, or the most reuerend
and learned *Archbishop* (to whose paines and care wee owe
the preservation of many excellent Monuments of our
Kingdome) neither wanted bookes to search, nor faithful-
nesse to relate what they found; who is also followed by the
Father of English Antiquitie, venerable *M. Camden* in his *Bri-*
tannia: But not to seeme partiall, I proceed.

In the next Section, he getteth at the Originall of *Parish* *Num. 4.*
259.
Churches to be in *Lay Foundations*: *Whereto*, for the encon-
agement of the deuotion of the Founder, the *Bishops* had reason
not to bee unwilling to restraine from the publike treasure of the
Diocese, the offerings which out of that territorie was thither
brought,

brought, to the particular benefit of the Incumbent. This is probable, as before in the Originall of Parishes elsewhere.

But, where he saith, *That both the limites and the persons that should repaire thither, and offer there, were assigned by the Founder, they being his Tenants and Familie: And that according to his Demesnes was the circuit of the Parish;*

Animad. 3.

This doubtlesse is false: For since that, euen according to the Capitulars, each Parish was to haue his *Terminum de quibus Villis Decimas recipiant*, Limits of what Villages they must receiue Tythes; and this by Imperiall command: Surely this was in no countrey an Act of priuate *Founders*, who had nothing to doe in the Execution of such commands but the *Bishop* had, as before is prooued. But is it likely that the *Founders demesnes* were limits of Parishes? Then hence these improbabilities in this our Kingdome would arise.

1. That in those Shires of equall extent where are fewest Parishes were the greatest Lords. 2. That all land in a Parish must haue belonged to one Lord. 3. That Lordships should not extend to adioyning Parishes, without the Parish to whose Church they are annexed, should therein acknowledge the Founders Church for the Mother. 4. That then no more Lords then Founders, nay fewer, because some Founders might, and did build more Churches then one; and Kings beeing generall Lords might build many. 5. And lastly, the ancient Churches before these Lay foundations (they being not vntill the yeere 700.) and yet for Diuine Seruice multiplied, must be thought pulled downe, or else these *Lay Founders* must not haue the generall priuiledge. But he that should confesse Churches built euery where for the conueniencie of assemblies (as himselfe confesseth, pag. 250.) from the beginning of Christianitie, might well imagine these to become Parochiall, and for the particular exercise of the cure of soules, that from stipendarie salaries (wherein the Bishop had care imposed vpon him) a restrained meanes issuing out of such territorie, to be assigned by him

him, who had assigned the people to his government, to be ordered; and that was the Bishop. The Founders dedicated such houses to God, at the entreatie, or by the consent of the Bishop, more for deuotion then honour, resigning vp all their right, and renouncing all ciuill and naturall vse of the said place, leauing in the hands of the Bishop, Gods vicegerent in this businesse, both the *Fabrick* and *Dowrie* to be disposed by him. This in other Countreyes is manifest before, *ad pag. 83.*

He proceedeth to enquire the time, when these Lay foundations began, and findeth none heere before the yeere 700. and that but one of Earle Puch in Beda: Then in the yeere 800. many appropriate to Crowland, and so after. After, by occasion of the Law of Edgar, he relateth of *Mortuaries*; of the characters of a Parish Church to haue baptisterium, and sepulchrum.

261.

262.

Now because to make a Church Baptismall, onely belonged to the Bishop in other countreys, as in *Concil. in palat. Vernis*, is before specified, and the right of a buriall place did first belong to the Cathedrall Church, as in *Concil. Tribur. cap. 15.* to whose assignation may you thinke the Churches and Parishes did belong? For herein the custome of our kingdome, and of others was not different.

Animad. 4.

And at last he confelleth, that some Parishes haue had other beginning since, from alterations made in regard of the inconueniences of the former limits, and this by direction and authoritie both of the Popes and Bishops, and he addeth, from the King. The example of this latter is, how the King being requested by Ralph Neuill Bishop of Chichester, and Chancellour of England, that the Church of Saint Peters in Chichester, being poore, and hauing but two Parishioners, might be pulled downe, and the two Parishioners be adioyned to another Parish there.

267.

The King granteth it; for that either he might be Patron, and so haue a right of Patronage, to the extinguishing whereof hee must needs consent; or, as King, haue a consent to such actions, wherein by Escheat, or other casualtie, the Pa-

Animad. 5.

tronage might haue reuerted vnto him : or for that , as at the foudation hee granted a leaue of *Mortmaine* , so in the dissolution hee might giue leaue to any thing , that might preiudice his former Acte , and especially to the *union of Parishes* , as to many Appropriations also his licence seemed necessary , as appeareth by some Euidences in our Chartularies.

ANIMADVERSIONS on the tenth Chapter.

P. 269.



Ow he commeth to shew *the practise of Tithing*. And first , the naturall practise of Pagans here. Of *Cedwalla* before his conuersion, in tithing the spoiles of war, out of *William of Malmesbury* , whose credit he would lessen , *because Beda* , not remembring the tithing , maketh another relation. The second of the Germane Saxons , of tithing the tenth Slave to be drowned, out of *Sidonius Apollinaris*.

Lib. 8. ep. 6.

The story of *Cedwalla* , and the difference of *Beda* , and the Monke of *Malmesbury* , enter him into a consideration, how *Decima* in Tithing may signifie a greater or lesser proportion : Concerning which he bringeth two examples.

P. 271.

The first of *King Atkelstan* , who gaue to *Saint Iohn of Beverley* foure *Thraues* of corne of euery ploughland , which were payable before vnto the Kings *Auenary* , by custome of the countrey. And yet in a Bull of one of the Pope *Gregories* , as hee supposeth , the ninth : this is called *Decima* , whereas they are too little to bee neere a Tenth.

Animad. 1.

In this and others, I can onely guesse what is the meaning, neither certainly knowing what quantitie of Land was a *Ploughland* , or what number of sheaues was a *Thraue* , nor whether they , by composition receiued it , *nomine Decima* , which

which is most probable, in that it was according to the quantitie of Land, not of increase, whereas of a Ploughland but few acres might bee sowed, and all were not to yeeld continually a greater Tithe due then foure Thraues: Or whether by the name of a Bull so long after, the Monkes intended a new occasion to enhance the gift, since by this authoritie they might pretend, in the Donors mind, it was in proportion to a Tithe. If the words of the *Bull* had bene expressed, other coniecture or answer might haue bene framed; though from this example truly granted, being but one, no præiudice may arise to the cause in hand, vnlesse it had bene vsuall, which he doeth not declare.

Yet one example more; *And that of one Robert de Hesel, P. 272. to the Monasterie of Giseburne, where hee giueth Duas garbas de: Tota terra quam de Nouo colui in Territorio de Hesel, postquam illam tenui, aut quam ego de cetero colam aut heredes mei, ita ut Decimatio hæc cedat in fabricationem Ecclesiæ nouæ de Giseburne,* Two Garbas of all his land, which he newly tilled, in the Territorie of Hesel, since he held it, & as long as he and his heires shall hold it; so that this Tythe may be imployed to the building of the new Church of Giseburne: Here (saith he) the gift of the two sheaves is called *Decimatio*.

If by reading the priuate *Chartularies of the Church of Rochester*, I had not found small gifts, as of an *Halfe-penie*, of an *Egge*, and such like, even by Charter conueyed vnto Monasteries, I should wonder at the gift of two sheaves to a Monasterie: Yet because vpon the small value of an *Halfe-penny* or an *Egge*, being giuen as *Quittrent*, there was some dependance of greater possibilitie, by the whole Escheating, vnto the Monasterie which was seised by the rent, the gift was not so contemptible. But according to his interpretation of this particular graunt; to giue two sheaves for Tythe (which was then scarce worth an *Halfe-penie*) and for that to order such an imployment, *as to build a new Church*, which will not buy a stone, seemeth to mee not so pious as ridiculous. And therefore some other senses are to bee sought,

which both out of the signification of *Garbas*, and also the regard to the number *Duas* may bee coniectured. For although *Garba*, with addition of *frumenti*, or such like special name of Corne, is sometimes vnderstood by a Sheafe, yet without addition, it signifieth all corne that is sheafed, as in all compositions, *Decimas Garbarum*, for all Corne, *Coppas Garbarum*, and such other termes: so that calling it *Decimatio*, and onely naming *Duas Garbas*, It may well bee *Decimatio duarum garbarum*, the Tything of the two graines Wheate and Rie, which onely euery where are sheafed. But rather from the number *Duas*, hauing respect to *Decimatio*, and to the imployment, the *Forma Collationis*, why not *Duas Garbas*, two sheaues of tenne, which is *dupla Decimatio*, or *Decimatio duarum Garbarum*, a double Tythe; a fit proportion for such a purpose, especially being onely of *new Improoued Land*, *De terra quam colui de nouo*, and that might not bee much in that Parish. Heerein because I neither see the M-ss. nor am skilfull in the Husbandrie of those times, I can onely coniecture, and that if not probably (which I leaue to the Reader) yet lawfully I may, to reduce a stragling example of phrase, to the common rule of practise, by a fit sense.

Num. 2.
P. 272.

But now to the practise. And first the tale of S. Augustine the Monke, and the Parson of Cometon in Oxfordshire, and the miracle of one raised from death, certifying of the payment of Tythes, circa Annum Domini 330. is scornefully reiected, and the payment euen in S. Augustines time, is denied to haue beene vsuall, so that the Lord of the Manour might bee *instly taxed*.

Animad. 3.

The Narration is fabulous, and although it be so anciently related, as 400. yeeres agoe, and countenanced with such a Margin to Iohannes Anglicus his *Aurea Historia*, in the publicke Librarie of Oxford, proouing the possibilitie, because *Nulli dubium est, quod nunquam Anglorum durae ceruices Christi iugo se submisissent, nisi per magna miracula sibi diuinitus ostensa*, It is not to bee doubted, that the stiffe-necked English men
would

would euer haue submitted their necks to the yoke of Christ, but onely by great miracles wrought from God : Yet for the substance concerning Tythes, it is true, that both in the yeere 330. or 340. Tythes were heere paide, and that in S. *Augustines* time, *the payment was vsuall among other good Christians,* *In vita Sancti Augustini.* so that the Lord of the Mannor was iustly taxed. For the payment of Tythes heere to the Clergie (for *Capgrau* doth call him onely Presbyter) because as himselfe pag. 249. truly saith, *it is likely that in those times, the custome of this Iland, should not differ from what was uniformly receined, through those parts of Christendome, whereof wee haue left Testimonie remaying:* Since therefore the 2. Councell at Mascon saith, *Christianorum* (not onely *Francorum Congeries*) *longis temporibus custodiuit intemeratas,* The number of christians, for long times, hath kept inuiolable, the lawes of God, concerning Tything, and those long times, may extend hitherto; as by the testimonie of S. *Augustine* and S. *Chrysostome* appeareth; why not therefore here, since Christian religion was then defended by Christian kings, the *Romane Christian Emperors* then gouerning this Kingdome as a *Prouince.*

But as for S. *Augustine* the Monkes time, the Lawes of king *Edward* (besides the authorities produced by himselfe, pag. 276, make it plaine) That King in his Law for Tything, specifying seuerall kindes of Tythe, and ordaining punishment for the detainers, that *Qui eam detinuerit per institiam Episcopi, & Regis, si necesse fuerit ad redditionem arguatur:* Head-deth, *Hec enim pradicanit Beatus Augustinus, & concessa sunt à Rege, Baronibus & populo:* These things were preached by S. *Augustine*, and were granted by the King, and Barons, and people: Well therefore might the Lord of the Mannour be blamed to resist an *Acte of Parliament.* And so our Author also, who it seemes ouer-saw, or would not see, this important Testimonie, as may appeare, since both he citeth the wordes to other purpose, pag. 225. and the wordes next following he censureth, pag. 279. But to confirme this, besides the Law of *Alfrede*, which he saith, supposeth some former Law

In Textu Ref.
fens.

Law to precede, pag. 203. me thinkes the phrase of *Canutus* in his Epistle pag. 278. where he calleth a Law of Tything, *Antiquam Legem*, The old Law : and another before him in the *Law of Eihelred*, cited pag. 223. *Sicut predecessores nostri concesserunt*, As our predecessours haue granted ; may haue reference hither. To which I could adde that, in the *Charter of Henry the 1.* of certaine Churches to the Monasterie of *Rochester*, reckoning vp the Tythes and profits giuen , hee sayth by comparison, *Sicut Middletunam Sanctus Augustinus melius habuit tempore patris mei*, As *S. Augustine* had *Middletune* in the time of my father. But heere, not the Man, but Monasterie must be vnderstood, as by the designation of a time, *Tempore patris mei*, so by the use of those times, calling the Monasterie by the Saints name, as that Charter is *Sancto Andrea* : But chiefly it appeares, pag. 321. of the Authors booke, where *Middletune* was so giuen by the father of *Henry the first* to the Abby of *S. Augustines in Canterbury*. Neither yet here should the practise of our Countrey in payment of Tythes be omitted, which *Boniface of Mentz* in his Epistle to *Cuthbert Archbishop of Canterbury*, circa ann. 750. relates, where hee chideth the English Clergie, *quod, Lac & lanas ouium Christi oblationibus quotidianis, ac Decimis fidelium suscipiunt, & curam gregis Domini deponunt*, They Tythe, but teach not. Here therefore was Tything not long after *S. Augustines* time.

Epist. 105.

Pag. 276.

But from this Tale of *S. Augustines*, he proceedes to other practise.

In *S. Cadocs* life in *S. Augustines* time, where it is said, *Qui decimauerit debet diuidere in tres partes ; primam dabit confessori, secundam Altari, tertiam orantibus pro eo*.

Then of *Bishop Eadbert* his giuing a Tenth to the poore, out of *Beda lib. 4. cap. 29*.

Pag. 277.

Then of the Councill at *Celichyth*, where the Tenth of the Estate of enery Bishop dying, was commanded to be giuen to the poore.

Pag. 278.

After by King *Knouts* Epistle a generall payment seemes to be supposed. Yet

Yet in *Edward* the Confessors time the common practise is confessed to be disused by the *instinct of the devill* though he cauill at this Addition to the Law. Yet that in his time Tithes were annexed to the Church, appeareth in his charter, confirming the gift of the Mannor of *Leuesham &c.* to the Church of *S^t. Peter of Gant, sita in Monte Blandino*, Hee saith, *cum Ecclesiis Camiterijs, Decimis &c.* Pag. 279.

Ex Registro Episcopi Rossens.

Howsoever in the Conquerours time, *there was*, saith he, *a great disuse, nay no due*, which he would prooue, *because in Domesday Booke, there being often remembred, Ibi Ecclesia & Presbyter, and his Hides of land numbred, and in some places Decima named, and the places from whence: that now heere, but where Tythes are named with Churches they were neither due nor paid:*

Which how it can agree with the practise confessed in *Canutus* time, let the Reader iudge. But for answer: since the Lawes and Constitutions of England, before the Conquerours time, were so many and with such censures and penalties, the descriptions of *Domesday Booke*, in omitting somewhere, and somewhere not, should bee no argument of Tythes not being due, or not paid, but onely of the diligence or opinions of the *seuerall Inquisitours* in the *seuerall Counties*, some thinking the Tythes to bee *inquirable*, and some not: for in all places, euen the *Churches* are not specified, though we may well praesuppose them to haue beene: But, that they were annext to Churches then, The iudgement in *William Rufus* his time. cited by him pag. 416. may shew, namely, *That there should be restored upon the iudgement for the Abbey of Fischamp, whatsoener post mortem Regis, after the death of the King, was due in Decimis, & Sepulturis, & Offrendis, in Tythes, and Burials, and Offerings: heere Tythes are specified though not in Domesday booke, Many chartularies of that time remember Tythes which are not in Domesday booke, Vide sis Chartular. Ecclesiae Cantuariens. per Thomam Spot siue Sprot, citata pag. 321. & deinceps.* But the practise both before and after might declare it.

Animad. 4.

Pag. 282.

Addit. ad Conc.
later. p. 4. c. 4.
Pag. 283.
Extr. de Decimis.
cap. 5. peruenis.
In c. commissum
est.
In Addit. Conc.
Lat. p. 48. c. 1.

Since in the next place he remembreth, how immediatly after the *Conquest*, were both *Appropriations*, *Ecclesia cum Decimis*: The claime of Tythes, in the time of *Henry the first*, calling it *Provincia consuetudo*, the custome of the Countrey: The manner of paying about *Abingdon*, *aut ut Lege precipitur*, either as by Law it is commanded, or 40. sheafes *de Hidagio*, as in the *Chartularie of Abingdon*: That it was called by *Alexander 3. Generalis Ecclesia Anglicana Institutio*, the generall vse of the Church of England: That the phrase was neere, *Decimas Parochiani consueuerunt Ecclesiis persolvere, laudabilis consuetudo*, The Parishioners vsed to pay to the Church, it is a laudable custome: That Parochiall payment was a knowne right as *Adrian 4.* That Tythes *de Iure communi pertinent ad Ecclesiam*, of common right belong vnto the Church, by *Pope Honorius Legate, Anno 1220.*

Animad. 5.

Yet for all these, most plaine and eident proofes, so studiouly and pertinently collected, yet conclude not (saith he) for practise: Then, out of what premisses may wee draw a conclusion, if from generall custome wee may not draw practise? But we must expect, the obseruation of the *Examples in the next chapter*; where wee shall finde nothing to crosse this, but onely a *Collection of grants*, made by the consents of Bishops, who Canonically might agree to the breach of this common custome by a *speciall Translation* to one Monastrie or other.

Pag. 284.

He obiecteth, euen in the eleuenth of *Henry the third*, That the King makes a speciall grant of Tythes of Hay and Milles to bee payed out of his *Demesnes*, which therefore, it seemes, before were not.

Animad. 6.

Extr. tit. de Decimis c. 5. peruenis.

Yet before, they were due, nay paid though discontinued: which the words of *Alexander 3.* in his Canon, in the next page before, by himselfe alledged, may inferre, which are, *Decimas bonorum suorum consueuerunt Ecclesiis quibus debentur cum integritate persolvere, nunc tam laudabili consuetudine pretermissa, quidam ex ijs, de Lana, & de Feno, & de prouentibus Molendinorum, & Piscariarum, Decimas ipsis Ecclesiis*
sub-

subtrahere non verentur: They were wont fully to pay the Tithes of their goods to the Churches, to which they were due: Now this laudable custome being omitted, some of them dare withhold their Tithes of Wooll, and Hay, of profit of Mills and Fishing from their Churches. This *Canon*, (if not some priuate exhortation by a succeeding Pope) might occasion that Grant by that King, since this was directed to the *Archbishop of Canterbury and his Suffragans*, that is, to himselfe, and the Bishops of his Prouince: (though our Author P. 283. fraudulently interprete it, *Diocesse*, thereby to restraine the generallitie of the *laudable Custome*; as contrariwise, pag. 290. in an Epistle of *Innocent the third*, he interpreteth *Diocesse* by *Prouince*, to dilate the abusive practise of a few) The King therefore being in the *Prouince*, might be as some others defective heerein, and so in his Demesnes such payment was onely discontinued, though before they were payed. And the petition in Parliament by the *Parson of Gillingham* against the King for Tithe of Hay in Forrests, in the 6. *Edward. 1.* cited by him after, may well inferre it, where he claimeth the payment of Tithe Hay, by *Debentur iure communi*, as due of common Right, and no speciall Grant, euen of the King.

But after this, the Authour acknowledgeth the common practise and Right, where some Statute had not made a discharge, or prescription or custome had not settled a *Modus decimandi*. P. 288.

Hee further enquires, when this Parochiall right began, perswading himselfe that it was not untill after the Councell of Lyons under Gregory the tenth, by the authoritie of the three Monks, cited and answered before *Ad pag 147.* and by the saying of the Common Lawyers, That untill the Councell of Lateran, each man might pay his Tithes whither he would. P. 292.

And therefore after, he would interprete thole manifold testimonies of generall Customes, to be concerning *Lawes*, not *practise*: But all is to make way for his Arbitrary consecrations; all which in their true sence shall be granted him, and the Parochiall right, not at the alone will of the Patron or Parishioners, shall appeare to haue bene disturbed. Pag. 289.

P. 290.
Epist. Decret.
lib. 2. p. 452.

Innocent the third his Decretall Epistle is cited, to shew the vse of many, *qui Decimas pro sua voluntate distribuunt*, who dispose of Tithes as they list: And this he would pretend to haue bene generall, *and not to haue bene done by the wayward opposition of some onely, against the receined and allowed Lawes of this Kingdome.*

Animad. 7.

But this was the fact of wayward and peruerse men, who crosse'd the Ecclesiasticall and Common law, which did not then allow such voluntary distribution, which he saith was *clearly good*, but such were thought clearly *Irrite*, Voyd, if from the Lay Patron alone, without consent both of *Ordinary* and *Incumbent*, if the Church were *full*. And that they were so *froward*, may appeare, by the *Notice* the Pope tooke of them, *Peruenit ad audientiam nostram*, by the *Reason* he made against them, *Inconueniens & à ratione dissimile est*: It is vnfit and vnreasonable, that hee that soweth Spirituall things, should not reape carnall things; by the *Order* hee tooke for them, vpon contumacie, that censure should bee inflicted; and that the Archbishop should *ordinare quod Canonici*, ordeine what was agreable to the Canons, which were the Lawes of Tithes, *notwithstanding any Custome* against that which was *Canonicum*.

As for his dreame, rather then opinion of *Rentz-charge* in Tithes conueyed to Monasteries about that time, *hee can neuer prooue.*

Animad. 8.

But for satisfaction to our *Author*, who in all the remainder of this Chapter, would make the saying of the *Lawyers* to haue reference onely to the Councell of Lateran vnder *Innocent* the third, *Anno 1215.* or to that Decretall Epistle before about that time: Vntill when, say they, men might giue their Tithes to what Parish or Monastery they would. Let him consider. that if Tithes so giuen to Monasteries, were reclaimed by demaund, by authoritie of a Councell at Lateran, before that Councell; then that Councell cannot bee meant by the *Lawyers*, if they speake true: But, that so it was, is manifest, for amongst the Muniments of
the

the Church of Rochester, there is an agreement (vnder seale both on the Monkes and Bishops part) betweene *Gilbert Glanvill Bishop of Rochester*, and the Priour and Couent there, (*after a long suit in the Court of Rome*) vpon certaine demaunds on each part, whereof one for the Bishop is thus; *Tertio, mouimus is questionem, de Decimis quam suis quam* *Chart. Roffens. Ecclesie.* *alijs, & pensionibus, quas de Ecclesijs in Episcopatu Roffensi constitutis, contra Concilium Lateranense, & citra auctoritatem Episcopalem percipere non verentur*; Thirdly, wee questioned them for Tythes, both their owne and others, and for pensions, which they presume to receiue of the Churches, in the Diocesse of Rochester, *contrarie to the Councell of Lateran, and without the Bishops authoritie*. This Record is without Date, yet this Bishop euen dyed before that Councell 1215. And yet after this Agreement, confirmed all the Tythes in particular, collated by *Gundulphus* and his successours to that Monasterie, and did many Acts of fauour. Tythes therefore before that Councell reclaimed, and by the authoritie of a former Councell at Lateran: both which doe crosse his surmise of the Lawyers sense, which better may be referred to that vnder *Alexander the third*, and so bee vnderstood of Feodall Tythes, and agree with the speach of *Lindwood* cited pag. 293. *Ante illud Concilium bene potuerunt Laici Decimas in feudum retinere, & eas alteri Ecclesie vel Monasterio dare; non tamen post tempus dicti Concilij*, Before that Councell (vnder *Alexander the third*) Lay men might well retaine Feodall Tythes, and giue them to another Church or Monasterie, but not after the time of that Councell. And with this my *Observation* I passe to his next Chapter.

Tit. de locat. & conduct. c. licet V. portiones.

ANIMADVERSIONS on the eleuenth Chapter.



He former part of this Chapter, is a collection out of *select Chartularies* of diuers Monasteries, concerning the conueyances by *Lay Patrons*, of portions of Tythes to seuerall religious houses.

Whereby his intention is to prooue, In some, *how they did passe Tythes newly created*: In other, *how they did consecrate without consent of the Bishop*: In all, *how Lay Patrons did intermeddle in the disposition of Tythes as of other inheritance*: for observe the Title or summarie of this Chapter. *Arbitrarie consecrations of Tythes by conueyance from the owner, of all, or part to any Church or Monasterie, at his pleasure: In examples selected out of monuments of infallible credit.*

Animad. 1.

In particular to examine all were needlesse, and for me inconuenient, who must gesse at what I haue not seene. Yet for generall answeres, let the Reader obserue these.

1. That the right of the Patron, to giue consent by Charter to the passing away of Tythes, both his owne and Tenants, in part and all, and to diuide them from the Church of his foundation, is not denied; and is prooued by all those Chartularies. The question therefore is not, whether the Patron did it, but whether hee alone did fully and lawfully, without farther consent and confirmation, giue interest sufficient to the possession.

2. Secular and Ecclesiasticall Lawes had commanded the payment of Tythes: The custome of payment was generall: How then was there any newly created Tythes not due, not paid before, though it might bee through disufance or vsurpation detained, or by *composition, nomine decime* altered?

3. No

3. No Religious house nor Churchman, durst receiue any Tythes of a Lay-man, without consent of the Bishop, for the *Donationes* were *Irrita*, and themselues *censured*. Reade his owne quotations of the *Nationall Councell at Westminster vnder Anselme, ann. 3. Henrici 1.* and of another vnder Cardinall Iohn de Crema, *ann. 25. Henrici 1.* To which adde another, vnder William the Archbishop, *anno 1129. Vt nulla persona, Ecclesias vel Decimas, seu qualibet alia Ecclesiastica Beneficia, det vel accipiat sine consensu & autoritate Episcopali Canonica auctoritate vetamus, We forbid by Canonickall authoritie, that no person without consent and authoritie of the Bishop, receiue or giue Churches or Tythes, or other Church Benefices: To omit the many Epistles of Paschalis 2.* So then, no receiuing without consent, therefore no giuing.

Pag. 375.

*Ex continuat.
Florentij Wigor.
ad ann. 1129.*

*Apud Anselm.
lib. 3. Epist.*

4. The phrases of many of the Charters proposed are, *De omnibus unde Decime dantur*, Of all whereof Tythes are giuen. *Qua Parochiani debent reddere suae matri Ecclesie*, Which Parishioners ought to pay to their mother Church. *De quibus Decime dari solent*, Of what Tythes are wont to be paid. *De quibus Decima danda est & datur*, Of what Tythes are and ought to be paide. *Rectam Decimam de quibus Decime dari solent*, A true Tythe whereof Tythes are wont to be paide. *Vndecunque Decima Sanctae Ecclesiae spectant vel prouenire debent tam maiores quam minores*, Whence soeuer Tythes may belong or accrue to holy Church, both small and great. *Terram cum Decimis*, Land with the Tythes thereof. All these plainly shewe these Tythes which were consecrated, not to be newly created Tythes; and by these the rest may be conceiued.

5. Some of their *confirmations* by Bishops and Popes are produced, wherein their *Damus* and *Concedimus*, shewe their consent and authoritie; and the phrase in the later *confirmations* of *Iuste & Canonice possidetis*, sheweth the former conuei-
ance to haue beene so; for so *Iuste & Canonice* is interpreted by *Petrus Cluniacensis*, as his authoritie is applied *ad pag. 75.* and so *Canonice* after doeth signifie, in the confirmation of

Lib. 1. Ep. 28.

portions

Post Chartam
Gundulph.

portions to Rochester by the Church of Canterbury.

Yet in particular, to examine two Chartularies, whereout onely, he maketh inferences of new created Tythes.

Pag. 302.

The first out of the Chartularie of Abingdon. In the gift of the Tythes of Offington to that Monasterie: the Parishioners intreating the Abbot of Abingdon to receine their Tythes: Hee asked, whether anciently the Tythe of that towne were not given to the Church? And they answered, *Hoc esse moris Ville, ut a singula virgata Ecclesiæ illi 24. garbæ pro Decima numerata donarentur*, This is the maner of that Village, that 24. sheaves of euery yard-land are paide for the Tythe to that Church. Hence he inferres, *Here plainely no Tythe was Parochially paid before this Grant, but onely 24. sheaves of euery Yard land.*

Animad. 2.

But yet these were *pro Decima*, at first, by way of composition; though therefore, not paide, yet compounded for; which is all one. And to the question of the Abbot, *supposing Parochiall right*, they answered not, *Hoc esse Iuris*, but *Moris*: and to the question of *Antiquitus*, they answered onely, *Hoc esse*, though before this prescribed composition, it might be otherwise.

Animad. 3.

And this composition was not *diminished* though our Author, contrary euen to the sense of his owne quotation, doth vntruely affirme it: for the words are, that the Bayliffe of the Abbot at the time of gathering Tythes, *De singula virgata illius villæ tot manipulos Presbytero illius Ecclesiæ tribueret, quot superius diximus debere*: But surely it was that hee might inferre the Patrons authoritie to doe it, euen against the will of the Incumbent.

Pag. 324.

The other is, out of the Leiger booke of the Abbey of S. Albans. The Abbot and Conent about the 20. of Henry the third, gaue to the Church of the holy Trinitie de Bosco, and the Nunnes there, for euer, *Totam Decimam de Dominio nostro de Caysho in omnibus rebus de quibus Decima dari solent*: All the Tythes of our Demesnes of Caysho, in all things whereof Tythes are vsually paide.

Animad. 4.

Obserue, This Donation is long after the Councell of Lateran

teran 1225. and therefore vndoubtedly was not of Tythes not paide before, as the phrase, *De quibus Decima dari solent*, prooves, they were then customably paide. And also note, how he sayth there, *Perhaps they had discharged them*, that is, the *Prior and Couent*; necessarily then they were before charged, and therefore could not be newly created, though in respect of the Monasterie, newly bestowed.

Out of other Chartularies he hath made no particular inference, which is not answered in the generall.

BVt because the Chartularies of the Church of *Rochester*, *Ad Pag. 310.* are both more largely insifted vpon by the Author, and *Gr.* for seuerall respects seeme to be of best credite with him, as quoting them *pag. 282. Ante alia vetera Monumenta consulas si placet Chartul. Roffensis Ecclesie*, and in *pag. 370.* Since by the Grant of my gracious Mr. *His Maiestie*, I am a *Prebendarie* of the same Church, where, for the knowledge of the Temporall poore estate thereof, I haue had libertie to peruse the Muniments; I will more largely make answere to his seuerall instances out of them, as farre as these Charters and Registers that remaine will permit: for many, either through iniurie of time, or sacrilegious suppilation of strangers, or neglect, because the portions are conueyed away, haue miscaried.

And moreouer, I will first shew, how this Monasterie came to portions of Tythes; Then by whom they were confirmed; and lastly, I will explaine particular Graunts wherein Exception may seeme to be taken.

For the first, because the meanes of lawfull Iustification of a Title are the same with those of lawfull obtaining, I will out of an ancient Register of this Church set downe a forme of Iustification of two seuerall portions of Tythes, which although they are not named by him in his *Extracts*, yet are of the same reason with the rest, and being of the ancientest, (for before the foundation of the Monkes heere by *Gundulphus* there were no portions giuen) are for better prooffe; I will exscribe the whole Euidence.

P. 23. Memorandum quod Decime de Chelesfelde & Fernburgh, ex dono Ernulfi tunc Domini de Chelesfelde, & Geroldi Domini de Fernburgh, sunt confirmatae Monachis Roff. per Walterum Roffensem Episcopum, qui fuit in Episcopum consecratus Anno Domini 1148. & secuta est confirmatio earundem Decimarum per Dominum Adrianum Papam, 1159. Item per eundem Dominum suum confirmatae ijs Decime de Modingham, & per eundem Papam, & subsequenter per alios Episcopos Roff. sicut in eorum apparet scriptis, & per alios Apostolicos succedentes

* And it is declared by the Charter of the saide Walter Bishop of Rochester, that those Tythes of Chelesfeld and Modingham, were possessed by the Monkes, in the time of Gundulphus, who gaue and granted, the saide Tythes, of the gift of Patrons, with the consent of the Rectors of Chelesfield & Chiselherst, and Gundulphus was consecrated Anno 1077. and since they haue enioyed them.

Adriano : * Et declaratum est in litera dicti Walteri, quod illae Decimae possessae fuerunt ab ijs tempore Gundulphi, qui eis illas Decimas ex dono Patronorum, accedente consensu Rectorum Ecclesiarum de Chelesfelde & Chiselherst contulit & cōcessit, & fuit Gundulphus in Episcopum Roffensem consecratus Anno Domini 1077. & ab illo tempore praedictas Decimas perceperunt. Item habent in Parochia Ecclesiae de Chiselherst, ex concessione Episcoporum Roffensium ex antiquo Dimidium Marcam annuae pensionis. This sheweth plainly the manner of conueying portions, The Patron giues them to the Bishop by consent of the Incumbent, and the Bishop doth inuest the Monasterie.

But for the Second and the confirmation also of this, The Charter of Gundulphus himsele shal be next produced, which still remaineth with his seale appendant. The words are

* I Gundulphus -- approve and ratifie their deuotions to the Monkes, and giue vnto them Episcopall authoritie and consent, giuing and granting to the said Monkes Tythes lying within the Parishes of diuers Churches of our Diocese, to wit, the Tythes &c.

* Gundulphus Roffensis Episcopus &c. Noscat vestra vniuersitas quod cognita & intellecta charitate, Christi fidelium, Domini videlicet Henrici Regis & quorundam procerum Nobilium ad Monachos Ecclesiae B. Andreae Apostoli, cui Deo authore etsi indignus deseruio. Ego in eorum bona intentione laudans Dominum & gratiam agens Domino Iesu Christo, deuotiones eorum ad ipsos Religiosos approbo & ratas habeo, & ijs Episcopalem auctoritatem attribuo

& consensum, conferens ipsis & concedens Decimas intra Paro-

Parochias diuersarum Ecclesiarum nostræ Diocesis constitutas. *Decimas videlicet in Strodes & in Chealks de Dominico eiusdem Domini Regis ex eius liberalitate — Decimas de Henherst ex liberalitate Goscelini — Decimas de Rundall & de Thurang ex liberalitate Smalmani de Schornes — Decimas in Chellessfeld & Fernburgh ex benivolentia Aloldi & Ernulfi ex eorum Dominicis, Decimas de Modingham, ex dono Ansgoti de Chiselherst, Decimas de Bertrey, ex largitione Haimonis Maminot — Decimas de Dominico de Edintune, ex largitione Willielmi de Gurnay, Decimas de Westbrooke in Parochia de Culings ex gratia Radulfi Pincernæ, Decimas etiam de Feodis Episcopatus, videlicet de Wicham, &c. Ego dictis Monachis meis do & concedo in perpetuum. * Volo etiam, quod ipsi* * I will that the Monkes haue the Tithes in their owne Mannours within the Diocesse, and reteine them in peace. But all those Tithes aboue expressed — I assigne vnto them, and by my Bishoplike authoritie, which I enioy, I command and ordeine, that the Monkes haue and enioy them alwayes, to bee employed for prouision of victuals. These Graunts and orders I haue made for the loue of Saint Andrew, in his Church, by the assent of Archbishop Anselme. Anno 1091.

Monachi Decimas prouenientes in Manerijs eorum, infra Diocesim nostram constitutas habeant, & retineant omni pace. Has verò Decimas omnes superius expressas, tam eas quæ ex deuotione fidelium acquisitæ sunt, quàm eas quæ de feodis meis — ipsis assigno, autoritate Episcopali qua fungor, mando & constituo, quod Monachi nostri eas habeant, & teneant in usus victualium suorum, perpetuis temporibus conuertas — Istas concessiones & ordinationes pro amore Sancti Andreæ, in eius Ecclesia feci, assensu Domini Anselmi Archiepiscopi — Acta anno ab Incarnatione Domini nostri Iesu Christi, 1091.

This I haue so largely exscribed, repeating most of those particulars, which Mr. Selden quoteth, and were then giuen by him; to shew both in generall, and in those particulars, the authoritie of Bishops in such conueyances, though the grant of the Patron bee præsupposed: and euen how to the Monkes, who were Landlords, the very *Tithes of their owne Mannours* were by Bishops granted them.

To this I might adde the confirmations of *Walter, Richard, Gilbert, &c.* Bishops of Rochester; the style of whom is of some, *Damus*, but of all, *Concedimus & confirmamus*, and *ad securitatem, & pacem perpetuam concedimus*. And as

for Popes, *Adrian, Alexander, Innocent, Urban, &c.* they confirmed them. And of those others in other Diocesses, the Archbishops and Bishops confirmations, euen from *Anselme* downeward, are extant: wherein that they and their Churches had interest, the confirmation of the Church of Canterbury to Rochester, pointed at by the Authour in the end of the cited Chartularies of this Church, is sufficient te-

* Tithes belonging to the Iurisdiction of the Church of Canterbury, by the most reuerend fathers Archbishops of Canterbury, *Anselme, William, Richard, Baldwyn, and Hubert*, Canonically collated and confirmed, as wee haue seene contained in their Authenticke writings.

limony, where they say, * *Decimas ad Iurisdictionem Cantuariensis Ecclesie spectantes, à venerabilibus patribus nostris Cantuar. Archiepiscopis, Anselmo, Willielmo, Richardo, Baldwyno, & Huberto Canonice collatas, & confirmatas, sicut in Authenticis eorum perspeximus contineri.*

They might haue added *Theobaldus* also, for his confirmation also is extant with vs. And in the Iurisdiction of that Church, are the portions of *Bugley, Dudindale, Stalesfeild, Bilsintune, Elham, Ysfeild, Hamwold, Scrembroce, Geddings*, which are instanced vpon by our Authour; so that the portions of *Halegele*, and of *Malmmain*, and the Church and Tithes of *Walton*, may onely seeme amongst those which he hath cited, to want their cōfirmation.

As for that of *Halegele, ex dono Hugonis de Port*, although the confirmation of *Ralfe Bishop of Rochester*, be not extant, yet in that it is mentioned, that the gift was *pro amore Radulfi Episcopi*, as at his entreatie, his consent may not be doubted of, especially by him, who conceiuing the stile of *Gundulfus Charter*, yet shall consider that his successour *Gilbert Glanvill* in his confirmation addeth, speaking of *Gundulfus, quo procurante & disponente, const. t Decimas — fuisse adquisitas*; so the Bishop *Radulf*. both got and bestowed them, which *Radulfus* being then *Abbas de Sagio*, did subscribe to *Gundulfus Charter*.

And as concerning the portion of *Malmmaines*, That, with the other of *Halegele* were confirmed by *Pope Adrian the fourth. Anno 1154.* and that of *Malmains* by *Walter Bishop of Rochester*, and his successours, but at what time that was giuen, I know not.

And

And as for *Walton* being in the Diocesse of *Norwich* (not giuen in the time of *Richard the first*, as hee coniectureth, but in the dayes of one of the *King Williams* for his confirmation is in *Textu Roffensi*) it was not a Portion, but a whole Church endowed with Tythes, which was assigned to *Felix Stow*, alias *Filcheſtow*, a cell of this Monasterie by *Roger Bigot* An. 1086. vnder this name, *Ecclesiam Sanctæ Mariæ de Waleton cum pertinentijs*, which was then confirmed by *William*, *Hugh*, and *Roger Bigot*: but that had confirmation by the Bishops of *Norwich*, as *Adrian* in his confirmation saith, *Ex dono Rogerij Bigot & heredum eius & concessione Normycensium Episcoporum, Herberti, Hebrardi, Willielmi, Ecclesiam Sanctæ Mariæ de Walton habetis*, Of the gift of *Roger Bigot* and his heires, and the grant of the Bishops of *Norwich*, *Herbert*, *Euerard*, *William*, you enioy the Church of *Saint Mary* of *Walton*; now *Herbertus* was then Bishop. All the Donations therefore of the Church of *Rocheſter*, euen *Ab initio*, we see confirmed.

Yet for the particulars, in the third place.

The portion of *Buggeley*, for that the Patron by enioyning the payment of three shillings *per annum*, to the *Monkes* of *Colcheſter*, might seeme to haue some reall interest in Tythes. You must know that this portion was giuen to *Colcheſter*; and by them demised to the *Monkes* of *Rocheſter* for that summe, to which demise that Charter is but of consent, which the very words produced by himſelfe might inferre, *Reddituris inde annuatim Monachis de Coloceſtria tres solidos quamdiu eandem teneant & habere poterunt*, Paying yecrely to the *Monkes* of *Colcheſter* three shillings, as long as they hold it or may haue it. But *Philip* of *Leyburne*, who afterwards confirmed them, speaketh plaine, *Ipsis Monachis Coloceſtrie duos solidos dabunt, sicut ipsi inter se composuerunt*, They shal pay two shillings to the *Monkes* of *Colcheſter* as they compounded amongst themselves, This then is no *imposition*, but a consent to a *composition*.

The Portion of *Geddings* giuen by *Alan* of *Geddings*, which gaue occasion to the confirmation of *Richard the Archbishop*,

hath this worthy obseruation, that then, *John the Parson of Hese*, in which Parish is *Geddings*, keeping back ten shillings, which by couenant & promise he was to pay to the Monks for that Tyth, was impleaded before the Archbishop: And there the Parson promised to remit his *Parochiall claime*, if one of the Monkes sollicitors would sweare for the trueth of such Couenants; which he doing, the *Archbishop* confirmed them to the Monkes. Obserue here that *Parochiall claime*, is only answered by pretence of couenant, not donation of a *Patron*.

The Portion of *Stalesfeild*, wherein is the clause *Terendam sicut tenuerunt de Antecessoribus meis*, Must bee vnderstood, either for the condition, *pro societate*, or *pro anniuersario*, or for the Tenure, *In puram & perpetuam Eleemosynam*, other sense I conceiue not.

The Portion of Westbroke in Culings, wherein the Patron seemeth to impose halfe a marke, is thus to be vnderstood: *Radulphus Pincerna* gaue the Tyth of that field: This Tyth was valued in *Textus Roffensis per annum* at five shillings, now *Adam Pincerna*, willing to pleasure the Monkes, in respect of the loue his Ancestors shewed them, he and his brother, who was then Parson of *Culings*, desiring it for peace sake, Hce gaue consent to the value of halfe a Marke, to bee payde by way of composition.

The Portion of *Hamwold*: In this it is to be obserued, that the *Patrons of this Portion*, did obtaine the confirmation of the *Prior and Couent of Leeds*, to whom this Parsonage was appropriate; wherein the *Prior and Couent of Leeds*, euen confirmed the confirmations of the Archbishop: Nay after *Nicholas Hacket* the sonne, and *Ralph* his sonne, did sweare in the Chapter house at Leeds, for the indemnitie of the Parish Church, by their Chappell at Hamwold. Such was the interest of the Parsons through Parochiall right.

In the Portion of *Edintune*, the heire doth onely confirme a composition.

In the Portion of *Wicham*, before out of *Gundulphus* Charter

ter we see that it was of his owne Fee, And this, saith *Textus Roffensis*, he gaue to *Godfrey de Talebot*, reseruing *omnem Decimam omnium rerum ad opus Monachorum suorum, quam etiam dedit illis ateraliter possidendam*. *Hamelinus de Columbiis*, therefore made no new donation but confirmed the olde, as in the Chartularie euen quoted doth appeare, where in the controuerſie betwene the *Chaunter of Rochester*, and the *Parson of Frindesbury*, the *Tenants of Wicham* swore, *Cantoriā eam* (that is the small Tythes) *antiquitus possedisse cum blando*, That they enioyed them anciently, with the Tythe of corne.

By which claimes of the *Parson of Frindesbury*, for the Portion of *Wicham*, the *Parson of Hese for Geddings*, the *Parson of Eltham* for *Modingham*, for so it runnes in the *Charters*, *Decimas de Modingham quas disrationauerunt contra Picardum Personam de Eltham*, The Tythes of *Modingham* which they recouered against *Picard Parson of Eltham* (and all these before *Anno 1200.*) and the confirmations of *Hammold*; I take it the practise of *Parochiall Tything* is plainly confirmed; for how else could the Parsons impleade the Monasteries for such portions issuing out of their Rectories? And because against them *Couenants* and *prescription*, and not *donation of the Patron* is objected, I may well coniecture in the opinion of the Parsons, that only their predecessors could passe them for their time; or the Patron but at their pleasure.

But hee objects, that in the confirmation of *Richard the Archbishop*, 23. of *Henry the 2.* (which he supposeth to be the first Confirmation, but he is deceiued, for both *Archbishops*, and *Bishops of Rochester*, and *Adrian Pope of Rome* had confirmed them) the Archbishop seemes to ground the right of the Monkes enioying such portions, onely from the deedes of Lay-granters, *Cognito Iure predictorum Monachorum, per inspectionem instrumentorum suorum, considerata etiam diuturna illorum possessione*, Knowing the right of the Monkes by sight of their instruments, and considering also their long possession. But these Instruments are as well (if not rather) of

of Granters that are Ordinaries, as of Lay-Donors; as the confirmation of the *Prior and Couent of Canterbury* (whose Counsell hee tooke herein) before rehearsed, doeth testifie. *Neither am I of opinion, that either the Bishop without the Donor to preiudice the Patronage; nor Donor without the Bishop to empeach the Iurisdiction; nor both without the Incumbent to empaire the Maintenance, could doe any valide Acte in such conueyance.* And this may also serue to satisfie the phrase of *Hubert the Archbishops Confirmation.*

And so much out of the Records of the *Church of Rochester*: by which it appeares, that all their portions were at the first confirmed and granted by the Bishops: that the first, were by consent of Incumbents; that Parochiall right was claimed against them; that Patrons onely intermeddled not to make, but consent to compositions of Tythes. How then can the sense of *New created Tythes*, the *Arbitrarie disposition of the Patron*, the *sole interest of him* in the Tythes, the *uncerteintie of Parochiall right*, which are his *new Inuentions and Fancies*, be hence prooued? And if not hence, why should not the Grants in other *Chartularies* haue Interpretation from these, which are both as ancient, and faithfully related? To ascerteine which, I will onely say with *S. Gregory, Venite, & cuncta que scripsi, nisi ex lectione monstrauero, cum qua vultis disputatione recedite*, Come, and if I shew you not all what I haue written, depart with what doubting you will.

*Lib. 3. Indict.
12. Epist. 41.*

Pag. 353.

But to returne to our Author: who in his next Section after his *Chartularies*, enters a passage out of *my Profession*, to prooue his former intention; that is, the *interest of the Patron in Tythes*, and that is of a *Writ de Aduocatione Decimarum*, *Rot. Cart. 5. Regis Iohan. Memb. 8. in a suit betweene H. Bishop of Lincolne, and the Prior of S. Katherines without Lincolne, &c.*

Animad. 5.

If this be vnderstood of King *Iohns* time before the *Late- ran Councell*, as the quotation of the Roll in the Margine would import; and the sigle *H.* may signifie *Hugh* then Bishop of *Lincolne*; then the phrase *Decimas de Dominicis suis liberè conferre consueuerunt*, which the Bishop of *Lincolne*, and the

the King and Nobles claime, may haue good sense against Parochiall right, claimed by the Prior for the Church of N. and yet admit no *Arbitrarie consecrations*; for there *liberè*, is not free from Episcopal authority, but Parochial constraint; they hauing before beene made canonically *Decima separata*, that is, a portion vpon which a prescription being added, (and the Bishop insists vpon the custome of himselfe, and predecessors) there can be no re vniion. And in such case the *King and Bishops and other Grandes* might interpose themselves to make good their predecessours, and their owne Grants.

But suppose his interpretation of *Decima separata*, for a Benefice of Tythes not annext to Churches; what is this separation or collation without consent of the Bishop? that is not exprest in *Liberè*, which as before hath onely reference to parochiall right: Though in respect of the Aduowson or Patronage if they were so separate who denieth it to King or Patron? yet, in that its said in the Kings claime, *Quia consimiles Decimas conferimus in quibusdam Dominicis nostris*, not in all; and *Quamplures Magnates*, not *omnes* doe the like, it may seeme some priuiledge, rather then *common Right of Patrons*? for then all Patrons and in all Demesnes should haue equall right: Though the Kings soueraigne authoritie in these and all other causes Ecclesiasticall, I doe heartily acknowledge.

The like prohibition, *Anno 7. Edwardi 1.* in the Chartularie of *Osney*, betweene the Abbot and Couent there, and the Parson of Harewell, for two parts of the Tythes of certaine Lands: there the King prohibits the prosecution in the Ecclesiasticall Courts; because, *Tangit nos & coronam &c. maxime cum consimiles Decimas in pluribus Dominicis nostris conferamus, & etiam plures Magnates Regni nostri &c.* Pag. 357.

This may haue a good sense, namely of Tythes anciently collated to the *Free Chappell of S. George in the Castle of Oxford* (from whence *Osney* claimed them) as appeareth by the words, *Ex collatione Progenitorum nostrorum Regum Anglia,* Animad. 6.

By the gift of our Progenitors Kings of England: Now, Parochiall Right could not reclaime these, being once separated by Canonick authoritie: And therefore for the Parson to claime interest in such, might occasion a Prohibition; and the reason might be; for the King and Nobles did giue the like so anciently collated and leuered. Besides, this prohibition and the former may haue the same answer, as before.

Pag. 358.

Houeden. p. 2.
fol. 460.

Yet the Councell vnder *Hubert* Archbishop of Canturbury in the 2. of King *Iohn*, though repeating and respecting the *Lateran Councell vnder Alexander the third*, must haue an interpretation contrarie to that which is the meaning of that *Lateran Councell* which is examined before, *ad pag. 114. & 138.* It must be vnderstood of *receiuing arbitrarie consecrations, not thereceiuing of Infeodations, because heere in England such Infeodations were rare, and therefore not likely to bee intended by this Canon vnder Hubert.* What then? though they were rare heere, yet they were irregular, and therefore heere might be condemned; which he must obserue, because that euen supposing his interpretation hee may see, that in that Canon the *Actors were censured* and the *Act annullate*; But that at that time there were Tythes giuen, which were not before *in esse*, hee cannot prooue, and as for Tythes conueyed by Inuestiture of Churches needs more prooffe, though any such *Extravagant Act* were not Valide.

Pag. 359.

In the Section following, insisting vpon his purpose to prooue *Arbitrarie consecrations*, Hee would imagine those phrases, (*Quæ Decimari debent*, Those things which ought to bee Tythed; And, *Quæ Decimari debent more Catholico*, Those which ought to bee Tythed after the Catholike manner) in many Grants to expresse no Canonick payment before: But, that then *New Tythes* were giuen, which though not before, yet then *by the Canon Law ought to bee Tythed*; For that the obedience to the Canons in this point was generall through the Kingdome is most false, wee know the Trueth by a cloud of Home-bred witnesses. So our Authour.

But

But these phrases doe but shew the *extent or manner* of the Tything, and the duty of payment, not *Arbitrarie* but *necessary*: Nor inferre they any opposition to the Canon Law; for that were absurd, to acknowledge it (before it were objected) in such Donations especially, in conueying Tithes to those, who could not receiue them, if opposite to Canons: But let him disprooue the generall lawfull practise, for, as for the disobedience of some few in bestowing Tythes, though *not newly consecrated*, I doubt, but as for newly consecrated, *his home-bred witnesses cannot testifie*. Animad. 8.

And from his strange interpretation, wherein hee straines his wit to make good his *paradoxe*, hee makes a comparison betweene these two phrases, *Quæ offerri solent*, and, *Quæ decimari debent, vel solent*, and would thence inferre a like *Arbitrarie Custome*; P. 360.

Whereas some offerings both of Christians and Gentiles are *Arbitrary*, but Tithings are as much *debent* as *solent*, and so are *necessary*, and otherwise to call them, and not prooue them is *petitio principij*. Animad. 9.

Yet to prooue his *paradoxe* he relates how in the booke of Doomes-day, Stori the Ancestor of Walter de Aincourt is specially thus privileged, that hee might sine alicuius licentia facere Ecclesiam (in Darby or Nottingham Shire) in sua terra & in sua loca & suam decimam mittere quo vellet, without leaue of any to make a Church in his owne land, and in his owne Fee, and to send his Tythes whither he list.

This of Stori sure was a *Priviledge*, and that from the King, as may seeme, for that it is noted in that *Temporall Description*, because the granting of any land in *Manum mortuam*, (which by making a Church was done) did belong to the King to giue licence: To which acte of building a Church, the words, *Sine alicuius licentia*, meaning, *no secular Superiour* may bee restrained. And whereas he might build a Church in his owne land where hee list, hee might send his Tithes to which of the Churches he had built, but this by the *Bishops permission*; whose consent may as well be

Goldast. Con-
stitut. Imper.
Tem. 3.

supposed, though not exprest, for the conueyance of Tithes; as the consecration of the same by the Bishop, is not expressed, yet necessarily required. How in the Empire it was, the *Consuetus Optimatum* at Pany, vnder the Emperour Berengarius, Anno 903. may witnesse, where it was decreed, *Ut omnis Decimatio ab Episcopis, vel his qui ab eo constituti sunt, praebeatur, nullus eam ad suam Capellam, nisi forte Episcopi concessionē conferat. Quod si fecisse contigerit, primum legibus subiaceat humanis, postea Excommunicatione populi constrictus, ad ultimum, ipsa Capella, quae magis contentionem quam utilitatem praestat, destruat*: That all Tithing should bee assigned by the Bishop or his Deputy, that without his grant none should conuey them to his owne Chappell; which if he doe, first the Secular Law shall punish him, next, the people shall bee excommunicated; and lastly, the Chappell shall be destroyed, as affording more cause of strife then profit.

P. 361.

But it may seeme, hee feared such an answer, and therefore sets himselfe to prooue, that *it was lawfull to build Churches in their owne Fees, without consent of the Bishop, and this hee saith was challenged by the Baronage of England; and therefore citeth a Decretall Epistle of Innocent 3, Tom. 2. pag. 228.*

Animad. 11.

But it is a false quotation for his purpose; for saith he, *It was challenged without licence, but the Pope allowes it to the Laity, so that they had licence from the Bishop of the Diocesse, and that the new foundations should not becreane ancient Churches of their assigned endowment.*

This last Clause, and not the first, was that which the Baronage pretended in defence of the Archbishop, for building a Church at Lambeth, for otherwite besides the *Archbishops owne authorizing* his owne Acte, euen the confirmation and approbation of Pope Lucius is there signified, and therefore not challenged without licence: but against this, by reason of the hurt thence arising to the Church of Canterbury, was this Decretall Epistle; for the immediate words are, *Sed ex hoc opere videtur Ecclesia Cantuariensis dignitas, ex parte non modica deperire, &c.* But by this

this worke the dignitie of the Church of Canterbury would greatly bee empayred: and nothing followeth concerning licence of the Bishop. As for building of Churches without cōsent of the Bishop, obserue how far the Emperour was, who euen makes this Capitularie, *Placuit nobis, ne Capella in nostro Palatio, vel alibi, sine permissu Episcopi, in cuius est Parochia fiat*: It is our pleasure, that no Chappell in our Palace, or elsewhere, bee without permission of the Bishop of the Diocesse.

L. 5. c. 182.

Againe, he returneth to his *Paradoxe*, which out of two Epistles of *Iohannes Sarisburiensis*, he would inferre; for that in *those cases* of Tithes, no title is made meere by Parochiall right, but *Prescription* or *Consecration* are the grounds whereon they are demaunded.

The first case, Ep. 21. is betweene two neighbour Parishes: the quæstion is, to which Church the Tithes and Parishioners belonged, and for this, the one partie pretends a *former Indgement* for him. Here could be no demaund by Parochiall right, when the quæstion was of it, and nothing else demaunded but Parochiall right, and therefore in the Libell, both *Parochiani* and *Decimas*, wherein Parochiall right consisteth, were the two demands. The like is, Ep. 87.

Animad. 12.

The second case in Epist. 84. is also betweene two neighbor Parishes, for Tithes (*pertinentes ad Ecclesiam de W. & quas in die Consecrationis iam dictæ Ecclesiæ, Radulfus Rotundus obtulerat, Episcopo Londinensi præsentē & approbante*: Tithes which belonged to the Church of W. and which in the day of the Consecration of the said Church, *Radulphus Rotundus* did offer the Bishop of London, being both present and approouing it) which were detained by another Parish, without any sentence; whereas the Parish W. had euicted them from the predecessor of the Parson, and the other Church. Now in this case is not Parochiall right claimed? *Decimas pertinentes ad Ecclesiam*? And this, both by prescription, and ordination, and a former sentence is iustified. So that in both examples he hath dealt *falsely*. But in this later is a plaine

Animad. 13.

signe of the *Bishops approbation*, to each mans offering of Tythes: like that in the confirmation of *William Giffard* Bishop of Winchester, cited by him pag. 344. In the same *Salisf. his* 28. *Epist.* and 109. as also for Parochiall right.

P. 362.

But *Theobald the Archbishop*, reprehendeth *Ala the Countesse of Warren*, for that shee did not pay the Tythes which her husband had vowed, therefore there is *arbitrarie Consecration*.

Animad. 14.

These Tythes were not the Tythes of the Demesnes, but *Denariorum Gabuli*, of rent money, which he might vow, & she ought to pay: The tenth of rent, not increase, though out of her Dowry; because it was vowed upon the Altar; it was the Dowry of the Church: it was so to bee, for so it was her Dowry; And this Tything can extend no further. See pag. 342. the words in the Authour.

P. 363. & 364.

Againe the three Monkes, *Knighton*, *Higden*, and *Walsingham*, are cited, who before are answered: and for confirmation of their opinion, concerning the Councell at Lyons, Hee bringeth a petition in Parliament, made by a Parson of Gillingham against the King, for denying him out of the Forest situate in his Parish, Tythe Hay, and Venison, and Pannage, and other profits, which *Ecclesia sua de iure communi debentur, secundum formam Supplicationis & exhortationis Apostolica porrectam Domino Regi apud Gillingham quando fuit ibi ad Natale*, What was that *Exhortatio*, or *Supplicatio Apostolica*? surely some particular letters from Rome obtained in behalfe of the Parsons, and no new decree.

Animad. 15.

Neither by this may it seeme, that in the Kings case, Parochiall right of Tythes, was not yet euery where settled, although increasing in a Parish: Nay by this we may well see, they were euery where due even from the King, in that the Parson could claime them by *Iure communi debentur Ecclesia sua*, They are due to his Church by common right, and durst procure letters from Rome, and complaine even in a Parliament: sure his complaint was no generall complaint, against an allowed custome, but a speciall wrong in this place alone. Nothing stronger then this to prooue Parochiall right, if the

the Kings Forrests must pay Tythe to Gillingham, *de iure communi*.

In the next Section, hee speaketh of Tythes not assigned Pag. 365. to any Parish to whom they doe belong: And entreth this digression by saying, that untill those innovations by Canons, in denying Lay-men right, arbitrarily disposing the iurisdiction, which the common or secular law had formerly challenged and exercised in detayning, the right of Tythes betweene the Priests, and Parishioners, grew out of use.

And yet in all his 14. Chapter of Iurisdiction of Tythes, not Animad. 16. any secular law so directly intermeddled in Tythes, but euen sincethat time of the Lateran Councell (which yet he would prooue to be the time of forbidding such consecrations) the Epistles of Ioannes Sarisburiensis shew the contrary, and the Decretals of Alexander the 3. written vpon suits to this countrey, can testifie, besides those suites for Tythes in the Archbishops Courts, which after out of the Chartularies of the Priories of Rochester and Leeds I will produce. And the Temporall Courts cannot holde plea of Tythes, vntill it be by way of prohibition, but onely by vertue of late Statutes.

But saith hee, out of Thorpe a Iudge, that in such places out of any Parish, as in the forrest of Englewood, the King ought to haue the Tythes to dispose of, and not the Bishop, and relates that the Archbishop made suite to the Councell to haue them.

Although I know and acknowledge the Kings prerogative, in disposing all Tythes by his Supreme power in causes Ecclesiasticall, yet chiefly in Forrests; (for to him alone Forrests did belong) and especially that of Englewood, which we l euen in reason might be granted him, for that in Affarted land much grew more Tytheable then before, to the more benefit of the Clergie: And it is not said, the King may keepe, but collate to whom he will, which inferres the right of Tythes. Animad. 17. And since, as in the Records after, the King there claimeth a priuiledge to build Townes, erect Churches, Affart lands, and giue those Churches with the Tythes of that lands, to whom he will, because it is not within the bounds of a Parish; well he might by his Preroga-

Prerogative and Supreme power, adde the Tythes of the Townes to the Churches, as euen by the *Capitulars lib. 1. cap. 93.* it is granted, *Sancitum est de Villis nouis, & Ecclesiis in ijs nouiter constitutis, vt Decima de ijsdem Villis ad easdem Ecclesias conferantur*; It is ordained concerning new villages and Churches therein newly founded, that the Tythes of those villages should be conueyed to those Churches. And this is repeated in the *Concil. Wormatiens. can. 52.* And in *Triburiens. c. 14.* there it is, *Si vero in qualibet sylua vel deserto loco ultra milliaria 4. aut 5. vel eo amplius aliquid dirutū conlaborauerit, & illic consentiente Episcopo Ecclesiam construxerit, & consecratam perpetrauerit, prospiciat Presbyterum ad seruitium Dei idoneum & studiosum, & tunc demum Nouam Decimam Noua reddat Ecclesie, salua tamen potestate Episcopi*; If in any forrest or desert place aboute 4. or 5. miles off, or more, any shall reparaire or build a new Church, by consent of the Bishop, and shall haue it consecrated, let him prouide a fit and honest Priest for the seruice of God and then let him giue his new Tythes to his new Church, reseruing the authoritie to the Bishop: (For as the Church was consecrated by the Bishop, so the Tythes were disposed by his consent; for in those times nothing concerning the Church was done without the Bishop or Popes consent and confirmation :) So in this case, the King making of a desert, an Adesart. But yet *Herle* the Lawyer is after cited to be of another minde then *Thorpe*.

Pag. 367.

But that this is not onely a Prerogative to the King, but the same which the Baronage claimed in King Iohns time, hee intimates.

Animad. 18.

Whereas yet that was in the building of Churches, not in new affarts, but in ancient Parishes, as that of *Lambeth* in the Epistle of *Innocent* was, and no forrest. And the Kings grant of a prohibition in his owne name alone against the Bishop of *Carleile*, sheweth it not to be a common priuiledge to his *Magnates* as to himselfe, for else as before he would haue put his *Magnates* as himselfe in the prohibition.

Pag. 368.

Now because *Herle* a Lawyer sayth, that such Tythes out of Parishes

Parishes might not arbitrarily be given, but that the Bishop of the Diocese should have them, he is censured, to speake suddenly, that is, rashly, and out of the Canon Law, not out of the Common Law. If he knew not how to speake as he ought, what doeth our Author? It were well that hee should Tutor him in his owne profession, and shew that Tythes were given or assigned to any Church without the consent of Bishop or Pope: and what Rule is there in the Common Law concerning Tythes, but it is taken from the Ecclesiasticall Law? *Animad. 19.*

ANIMADVERSIONS on the twelfth Chapter.

IN this twelfth Chapter, first, concerning *Appropriations of Churches*, Hee obserueth that in the Saxons times in their Appropriations they vsed not to say *Ecclesia cum decimis*, or *Ecclesia cum decimis in annona &c.* which in the Normans time was frequent. *Pag. 370.*

The reason was, not because Tythes were not then ioyned to Churches; but because they were not as in the Normans time so disioyned, But by the word, *Ecclesias*, all passed then: Afterward, by reason of the seuerall translations of them, both the explication *cum decimis*, with the parts thereof, as also the place was added, where the Tythe grew, in such a demesnes, of such a man, and such like: which by the Bishops approbation might be altered and translated. *Animad. 1.*

In this Section of *Appropriations*, he saith, *The common intent was that the Monasteries should put Clerkes and Vicars in the Churches.*

This is true, as Patrons they did præsent, and the Bishops did admit: and in Appropriations the Bishops did vsually reserve a power of ordaining a competencie to be assigned to *Animad. 2.*

the Vicar, or did presently doe it at the first; and the Vicar had alwaies recourse to the Bishop, in any grievance offered from the proprietaries for the increase of his portion.

Pag. 371.

Of this inioyning the maintenance of Vicars, hee produceth two examples of both Prouinces, And first of Yorke before Canterburie (for he will bee against the knowne authoritie of those prime Seas.)

But in that last, in the Prouince of Canterburie, out of Pope *Lucius*, wherein is the word, *In quibus praesentationem habetis*, he saith, this can not be vnderstood of those which the Monasteries enioyed *Pleno Iure*: whereof indeed before he had spoken.

Animad. 3.

Yet heere out of our Records, let mee tell him, that Anno 1255. the Prior and Monkes of Rochester, and the Prior or Warden of their Cell at Filchstow in *Walton in the Diocese of Norwich*, did present one *Stephen Banaster* to the Church of *Tremlegh*, *Officiali tunc vices Episcopi Norwicensis gerenti*, whom the Officiall instituted; and yet *Iohn* the Bishop thereof before, had in his cōfirmation said *Ecclesiam de Tremblega pleno Iure cum omnibus pertinentibus pertinere ad Priorem & Monachos de Walton*; That the Church of Trembleigh did belong *Pleno Iure* to the Monkes of Walton. But I conceiue therin, *pleno Iure* rather to be distinguished from *non per vices*, or, *non ex compraesentatione alterius*, then otherwise; though I contradict not the opinion of the Canonists, who say, a conueyance of Churches *pleno Iure*, to be of the right of Institution and Destitution, which in the next example of the next Section may haue place.

Pag. 373.

In this Number, to prooue his *paradoxe* (which hee can neuer prooue) That *Tythes passed from the Patron by his gift no otherwise then Freehold: neither was the confirmation of the Ordinarie necessarie*. Hee proposeth an example of one *Robert of Dene*, who giues to the Church of *Lewis*, a Church with Lands and Tythes, and two parts of the Tythes of Corne of another place; so that the Priest of that Parish shall pay halfe a marke, and shall enioy it at the hands of the Prior, as long as he doth well, and by him to be expelled if otherwise. If

If this were *pleno iure*, then for Institution and destitution, it was lawfull; if it were a *Donative*, then more. And whether this priuiledge were vouchsafed by the Bishop, or Archbishop, or Pope, who knoweth? The Authour is a Lawyer, why doeth hee not shew the Common Law, that giues power to priuate men, to appropriate Churches to Monasteries, without the consent of Ordinaries? And as for the intermeddling in enioyning a Noble for the Tithes, it was by way of *composition* (as in the Chartularies of Rochester I haue shewed) and by no immediate lawfull right: If no Lease bee good at the common Law of Tithes not impropriated, without the Ordinaries consent, how shall any Impropriation be made, or good without the consent of the Bishop or Pope?

Animad. 4.

And so, in his *charitie*, acknowledging the *Canons of Nationall Councell then*, against such *Arbitrary consecrations*, yet hee will suppose a practise contrary, both to appropriate, and inuest Church-men with them, without the Bishop, and would defend it, though if it were, it were *praua consuetudo*.

But here, let mee remember him of the Appropriation of *Hauchis*, in the last Epistle of *Iuo*; according to which forme, all the Appropriations of Churches with vs, are; The Patron deliuering them ouer to the Bishop, and the Bishop to the Monasterie, and that euen *Charitative*, out of fauour.

Animad. 5.

In the Chartularies of the Priory of Leeds, obserue, how in the Appropriation by *Theobald* Archbishop of the Church of Eslings in the Diocesse of Canterbury, it is thus; *Rogauit nos Alicia de Eslings, quæ fuit uxor Radulfi de Ciceſtria, ut Ecclesiam de Eslings, quæ in fundo eius sita est, Monasterio & Canonicis Regularibus de Leeds, in perpetuam eleemosynam concederemus, nam & illa, quantum ad se spectabat, in presentia nostra, temporalia ijs perpetualiter concessit: Alice of Eslings, that was the wife of Ralfe of Chichester, entreated vs, that I would graunt to the Monasterie, and Canons Regular of Leeds, in perpetuall Almes, the Church of Eslings, which is founded in her lands: for she, in what appertained to her, in our presence, gaue the Temporalties for euer. And then vp-*

on *Resignation of the Incumbent*, he doeth Canonically inuest them with it. All the rest are such like.

Ep. 39.

But *Iohannes Sarisburiensis* hath a patterne for all, where iustifying an Appropriation to the *Priory of Saint Osithe*, he remembreth the gift of the *Founder a Bishop*, the *Charter of the King*, the *confirmation of the Archbishop*, the *Bull of the Pope*. And in the Epistle 18. *Ecclesiam de Effingham, quam Meritonensis, petente Domino fundi, donauit Dominus Wintoniensis, Eugenius Papa confirmauit*, The Church of Effingham, which at the request of the Lord of the Mannour, the Bishop of Winchester granted to the Priour and Couent of Merton, and *Eugenius* confirmed it. These may shew the practise of that time, contrary to his opinion.

P. 376.

And whereas he *produceth the preamble of Alexander the third*, Extr. de Institut. cap. 3. ex Frequentibus;

Animad. 6.

That, is of Inuestiture of Clerkes, for the words are there, *Quod Clerici Ecclesiastica beneficia, sine consensu Episcopi Diocesis, vel Officialium suorum, recipiunt minus quam deceat*: That Clerkes, without consent of the Bishop of the Diocesse and their Officialls, receiue Church livings, which sometime, though irregularly to haue beene vsed, I neuer denied. And more frequently in these times, whereof our Author speakes; wherein as I coniecture, the *viciousnesse* of the former Popes, those *Fæces Pontificum*, which after *Adrian the third* succeeded, as *Pap. Massanius* saith, when *Sanctitas reliquit Pontifices*, Holinesse left the Popes, as *Platina*; gaue occasion to neglect, and neglect easily bredd contempt, and that vpon euery occasion brake forth to *opposition* of their censures and Canons, each man in as much as concerned his honour or profit, willing enough to take vpon him the prærogatiue of Kings, and to defend it with strong hand.

P. 378.

In the next Section, to prooue the interest of Patrons in the profits of Churches, hee produceth a *Chartularie of the Priorie of St. Needs*, where a Patron. *Nomine certi beneficij, gines to that Priorie sixe Markes of silver, to bee payed yeerely by the Parson of the Church of Wimbisse.*

This

This is vpon demise or *composition*, not an originall right *Animad. 7.* that the Patron had in Tythes, it is likely for some portion of Tythes there, so that now by this they may haue *Certum beneficium*, marke that word, which before was vncertaine in Tythes, of such kind I haue spoken out of the Chartularies of Rochester.

Whereas he saith, *he hath not in those times read of a Precedent, wherein the Incumbent was granter.* Now that they were hee may reade before, in the iustification of a Portion of Tythes, out of the Chartularies of Rochester, and in *Addit. Ad Concil. Lateran p. 13. c. 11.*

Out of interest supposed, he saith, *the vnderstanding of the new Canon, in the Synode of Westminster, held under Richard the Archbishop in 21. Henry 2. may be had, Nulli liceat Ecclesiam nomine dotalitij ad aliquem transferre,* No man may passe ouer the Church for a Dowrie, that is to remaine with the husband of his daughter or kinswoman during his life. *P. 379.*

But heere hee is deceiued; for by *Ecclesia*, the patronage *Animad. 8* only is vnderstood, which neither the Canons would suffer to passe by *inheritance*, nor *sale*, nor heere as a Dowrie, but would haue had all bestowed vpon Bishopricks and Abbeyes, as *vide Append. ad Concil. Later. p. 15. c. 6. Religioso loco ius patronatus conferendi liberam habeat facultatem*, Yet he may haue free libertie to bestow the patronage on a religious house, and *cap. 16. Unde cum ius patronatus annexum sit spirituali nemini licitum est vendere illud*, Patronage may not bee sold, because annexed to a spirituall thing, and *cap. 17.* It is dishonest to sell patronages. And indeed how can this bee otherwise interpreted, vnlesse you could imagine a Lay man then, might all his life time enioy a Church (for being married, then he could be no Clerke) and not suppose it Infeodate, which here he doth not.

But hee that obserueth the *distinctnesse* of the Canons then, in saying *Ecclesiam vel Decimam*, by the one passing the patronage, and by the other the profit, will allow my interpretation.

P. 380.

But yet, that Patrons might inioyne a Pension vpon a Church, without either Ordinarie or Incumbent is prooued, by a Fine, where, vpon condition, that the Parson which should be placed in a Church by the Patron, should pay such a summe yeerely to the Monasterie, and thereof make faith to the Bishop, vpon institution, and after in their Chapter, a Monasterie doeth remit the patronage to the Patron. Whence he inferreth by the authoritie of the Kings Iustices in a Fine, his purpose is prooued.

Animad. 9.

But he is deceiued, if this pension (which is most likely) was paide to them before, for, the making faith, both to Bishop and Couent for such performance was vsuall, many are extant in our Registers. And in the confirmation of Bishop Gilbert Glanuill to his Monasterie, obserue these words, when hauing exprested many pensions, he addeth, *Et ne in prataxatis pensionibus percipiendis possit aliquod præiudicium dictis Monachis imminere, vel difficultas soluendi: Volumus & firmiter constituimus — ut omnes Rectores à nobis in eisdem constituti, vel a nobis & Successoribus nostris in perpetuum instituendi, de pensionibus prædictis fideliter & sine difficultate persoluendis, ipsi Monachis in Capitulo suo fidelitatem faciant præstito Sacramento, &c.* And least in the receiuing the foresaid pensions any preiudice may arise to the Monkes, or difficultie of payment, wee will and firmly ordaine — that all Parsons placed therein, by vs or our successors for euer, shall take an oath of fidelitie in the Chapter house, to pay the said pensions, faithfully and readily. And if this pension were not an *old*, but *new* one, vpon this composition, me thinkes the wisdom of the Monasterie would be much questioned, to leaue a patronage for 4. s. *per annum*, which is the pension. And vndoubtedly this pension was confirmed by the Bishop: And such is the meaning of those two Fines that follow next saue one.

P. 381.

For the next, that seemeth an erection of a pension by the Patrons, Bishops, and Incumbents Grants, which is exprest plainly.

P. 382.

After this confessing the practise of Institutions, yet hee sheweth the sole authoritie, not onely in the Bishop, but *vsually*

ually in Arch-deacons, of which, hee produceth some proofes.

But in that the Arch-deacon was the Bishops officer, And *Animad. 10.* as *Leuthericus* and *Fulbertus* *Epist. 34.* was *Oculus Episcopi dispensator pauperum*, *Catechisator insipientium*, The eye of the Bishop, the Amner to the poore, the Catechiser of the innocent, heere was no preiudice to the Clergie; though *Alexander* the third wrote a *Decretall* to rectifie euen that disorder, it is in *Addit. ad Concil. Later. p. 24. c. 2. & 3.* But that the Archdeacons did in the vacancie *suspend*, *Ioan. Saris. Ep. 3.* Did, *Vt mos est in possessionem liberam Canonice introducere, induit. Idem. Epist. 1.* Did receiue resignations, *Ep. 5.* and *Iuo Epist. 131.* and excommunicated intruders, *per Laicorum violentiam. Iuo ibidem* doe testifie.

In the next Section, hee prooues the alone interest, by the *Pag 385.* succession in the Benefices of the Ancestors, whereby there needed neither Resignation, nor Presentation, nor Institution, nor Induction, this supplying all: For which he citeth the Canon at Westminster 3. Henry 1. *Ut filij Presbyterorum non sint heredes Ecclesiarum Patrum suorum*: And another in the 25. of the said King vnder the Cardinall Iohn de Crema: *Ne quis Ecclesiam siue Prebendam paterna vendicet hereditate, aut successorem sibi in aliquo constituat beneficio*, and a multitude of quotations by the side to this purpose.

The first Canon supposeth not a succession in right, but *Animad. 11.* euen in place, and that by institution from the Bishop, for that they thought basely of the sonnes of Priests, and would by no meanes suffer the similitude of a Iudaicall succession, *hereditario possidere Sanctuarium*, as *Tit. de Iure Patron. c. consuluit*, which cannot be euen done at this day without a dispensation, *Ut patri succedat filius*, that the sonne succeed his father.

The whole Title, *De filiis Presbyterorum*, manifesteth this trueth, and most of his quotations; so that by the succession, not patronage is supposed of the father: but whatsoever it were, it was by institution executed.

The next Canon is of Patronages and Infeodations belonging.

ging to Lay-men, which *this Canon* would not permit Lay-men to conuey to any but to the Church, as before I haue shewed; which also may appeare, for that in this very Canon *Vide Hildebert. Ep. 55. Adjicientes quoque statuimus, ut Clerici qui Ecclesiis seu Beneficia habent Ecclesiarum*, Wee ordaine also that Clerkes (the first part being of Laymen) who haue Patronages or Infeodations of Churches, and that they may liue more licentiously, being inuited by the Bishop, will not be promoted to orders, let them bee depriued both of Patronage and Infeodations: for so *Ecclesia*, and *Beneficium Ecclesiarum*, and *Præbenda* must be interpreted.

Pag. 386.
Animad. 12.

As for that in the *Roll of Pleas*, 6. Rich. 1. It doeth not imply a deniall of *Institution in the Bishop*, but shewes that a time was before then, when the father being Patron and Incumbent, might *present* his sonne to the Bishop to succeed him; whereas then euen by presentation, hee could not be admitted to the next succession.

Pag. 387.

Concerning the *Law of Lapse*, whereof hee next treateth, I am ignorant; onely in the *Nonell* before cited by me, and pag. 393. by him, I finde, that if the Patron *present not worthy men, the Bishop may choose others*; as also *Toletan. 9. c. 2.* and that if the Patrons agree not, hee may *seale up the Church*, as before is shewed, which shewes the power of the Bishop vpon their default; but other thing I know not.

Pag. 391.

But after that, he searcheth phrases, which may import the sole interest of the Patron; the first is, that *it is called Donation, in their Writs of Quare impedit.*

Animad. 13.

Which we in our phrase indeed expresse, when wee say, *In whose gift is such a Benefice?* And hee may be said to *give* the Benefice, for that that indiuiduall person, elected and presented by him, hauing no *Canonically exception* taken by the Bishop (a part of whose flocke hee must gouerne) is vpon the Patrons *Title*, and the Bishops *Institution*, by the *ministerium* of the Archdeacon possessed of it; the *Title* being in the Patron the *approbation* in the Bishop, and the *execution* in the Archdeacon: the Patrons ende being the discharge of his trust to present

present and nominate ; the *Bishops*, the cure of soules ; and the *Archdeacons* the Church, to which both belong.

The next word is *Præsentare*, to signifie the placing of an *Incumbent* in a Church by *Inueſtiture*, being made onely of repræſentare, which in that Councell of Lateran and elſewhere, occurs *Sub Alexan. 3.* alſo for præſentare.

But in that Councell of *Lateran*, and the reſt of the places, it ſignifieth to *preſent*, to be allowed and inſtituted by the *Biſhop*; which is quite oppoſite to *Inueſtiture*, *Præſentare* being *commanded*, and *Inueſtiture* being *forbidden* to *Laymen*: And therefore this interpretation is not true. The phraſe of *Repreſentare ad Eccleſiam*, is in the firſt Councell at *Arles*, *ſub Sylueſtro Papa*, cap. 23. *De his qui Apoſtataſ, & nunquam ſe ad Eccleſiam Repräſentant.* In which ſenſe, *Αποκαθιςναι* ſignifieth, *Repräſento*; to Appeare or preſent to view, *Reſtituere vel reddere ut poſſit videri*, and ſo his nice deduction will come to nothing.

And the next word *Nominare*, which is, ſaith hee, the ſame *Pag. 393.* with præſentare, doth ſignifie to fill a Church by *Inueſtiture*, and for that he citeth, *Nouellarum*, cap. 123. §. *Si quis Oratorium*, where the words are; *Si quis Oratorium extruxerit, volueritq; in eo promoueri Clericos, vel ipſe vel heredes eius, ſi ſumptus ipſi Clericis ſubminiſtrant, & dignos nominauerint, nominati ordinantur; Si vero qui ab ipſis electi ſunt, eos tanquam indignos ordinari Sacri prohibebunt Canones, tunc locorum ſacratiffimus Epiſcopus eos quos præſtantioreſ putauerit, promoueri curam agito.* If any build an Oratorie and would preferre Clerkes, either he or his heires, if they giue them maintenance, and name thoſe that are worthy, let them that are named be admitted: but if thoſe who are elected by them ſhall by the Canons bee hindred from admiſſion, then let the moſt holy Biſhop of the place take care of promoting the more worthy.

Hee that ſhall but conceiue the conditions, *Si ſumptus &c.* *Animad. 15.* and *Si dignos*; And obſerue the explication of *Nominati*, by *Electi*; and the *Biſhops* priuiledge not onely to reſuſe the vnworthy, but in that caſe at his owne will to promote other

more worthy ; can not vnderstand as hee doth *Inuestitue*, but the courle of *presentation* as now it is.

Next he produceth the same word *Nominare* in a quotation out of *Cicero his Epistles ad Brutum. Ep. 7. where he saith the word Nominatio in the purer time of Latine signifies giuing a place or office that is voide.*

Animad. 16.

The words of the Epistle, being *Brutus* to *Cicero*, are these; *In Pansa locum petere constituit* (meaning *Bibulus*) *eam nominationem à Te petimus, neque digniorem nominare potes quam Bibulum*, *Bibulus* intends to sue for *Pansas* place — we desire that Nomination of you — neither can you nominate a more worthy then *Bibulus*. Where *Brutus* asketh this of *Tully*, being then (as *Manutius* affirmeth) *Augur*. Concerning whose office, he notes out of the *Rhetorickes ad Herennium lib. 1. Lex iubet Augurem in demortui locum qui petat, in Concione nominare*, The law commands the *Augur* to name in a public assembly, who may stand for the place of the dead; And againe, *Augur quidā damnatus de pecunijs repetundis in demortui locum qui petat nominauit*, An *Augur* condemned for bribery named who may sue for the place of one departed in an assembly. In which words no giuing a place or office is signified, but onely a dutie of naming who are or may be competitors for such an office ; that the people who haue choice may *auspicatō* take notice how to bestow their *Suffrages*; For else why should it be *in Concione* in such an assembly? but if not so, it can be onely to giue a suffrage, for I need not tell our Authour that the Consulship (for in that *Vibius Pansa* died) was not collated by any particular nomination, but *in Comitijs* by suffrages. Neither yet did *Bibulus* (for whom *Brutus* made, and, nō doubt, obtained his suite of *Cicero* in nomination) succeed in the office. O strange interpretations of a Criticke, to make good his false opinions; well it had beene if he had insisted on his first sense, pag. 86. of Nomination, where he saith, *presentation is onely as a nomination, not giuing interest and possession.*

A N I-

ANIMADVERSIONS on the thirteenth Chapter.



Eere hee treats first of *Infeodations*, but before the Statutes of Dissolution 31. Henry 8. mee thinkes hee prooueth but few; for that of Odo Bishop of Bayeux and Earle of Kent, saying, *Decimas, quas mei fideles habebant; and the other of Decimæ hominum meorum;* and the other by d' Oilly, are but the Landlords confirmations of their Tenants gifts of Tithes of those lands held of them. For Lords had authoritie therein, as may appeare in the Chartulary of *Abingdon*, p. 303. where *Bradinden* giuing his Tithes, said, He would entreat *Robert de Insula* his Lord, *Quatenus illius permissione, & concessu suo hoc confirmaret, ut hæc Ecclesiæ ipsius Decimæ donatione firmitus in posterum potiretur:* and the Lord hath a Right in the land demised to his Tenant.

That of *Robert d' Oilly* is thought to be an Infeodation by the booke of *Osney*, as that other of his, which repenting himselfe of, because *Contra naturalem Ecclesiæ usum*, hee had abused them, he reuoked and gaue them to the Free Chappell of *Saint George* in the castle at *Oxford*.

But hence his Corollarie is, that it will still remaine most probable, if not true, that what *Infeodations* were in England, had their originall, as well out of the right of arbitrary disposition of Tithes, challenged by the Laitie, without the graunt of the Pope, or Church, as out of Compositions or conueyances from the Clergie.

The first part is neither probable, nor cleare, especially concerning new created Tithes.

But this hee prooueth, because no sufficient storie, no credible monument, no passage or testimonie of worth, can iustifie

that generall right of Reteiner or disposition, to haue beene giuen by the Clergie, or Pope, vpon any condition whatsoever.

Animad. 3.

A generall Right of Reteiner or disposition was neuer granted, nor practised, but particular allowance by way of fauour, was graunted to each Acte, vpon seuerall reasons: which is sufficient for the purpose of the Canonists, who doubtlesse neuer say, that the Church by generall Indulgence or Canon, did allow any Lay men, alone to dispose or re- teine Tithes; but for speciall considerations, did grant such priuiledge to particular men, to the præiudice of the com- mon right; and where it could not helpe, was faine to tole- rate. For to shew this, all the Testimonies almost before ci- ted, are alledged.

Animad. 4.

The rest of his Testimonies onely seeme to prooue Infeo- dations, to haue bene heere in England, yet doe not inferre, but that they might haue originall from the Church, and therefore doeth not crosse the Tenet, that all Infeodations are from the Church.

P. 405.

In the next Section, hee considereth *Exemptions*, and that either by *Priuiledges*, *prescription*, or *grants*, and *compositions*, and *Vnitie of possessions*. But in this, because all came origi- nally from the Church, mee thinkes I see, how *Prelati* were *Pilati*, and these *Dispensatores* were *Dissipatores*: So *perditio nostra ex nobis*.

Animad. 5.

But O that our Lord the King by command, and the con- sciences of men by religious consideration would root out these weeds, which marre the corne, and hinder the labourer; These Exemptions, these reliques of Romes highell supersti- tion, the maintenance of Monkerie, which for auoyding scan- dal, though we suffer, yet wil be required of the consciences of men. But, *Ego parco, non inuehor, non exaggero, dolorem no- strum melius premo quam promo*: I forbear, I inueigh not, I doe not exaggerate, I better conceale, then reueale our griefe. He whose land must bee exempted from paying Tithes, let him consider, if his soule may not bee exempted from the blessing of God. And so I come to the last Chapter.

*Aug. contra
Epist. Parmen.
lib. 1. cap. 2.*

ANIMAD-

ANIMADVERSIONS on the fourteenth Chapter.

IN this *last Chapter*, in the first, second, and third *Sections*, first hee pointeth at the Histories of the iurisdiction of Tythes in the *Saxons* and *Normans* times, and since *King Iohn*. And first proposeth this *axiome*.

It is cleere by the practised common law, P. 411.
both of this day, and also of the ancientest times, that wee haue in N. B.
our yeere bookes, that regularly the iurisdiction of spirituall Tythes, that is, of the direct and originall question of the Right, belongeth—properly to the Ecclesiasticall Court. As all spirituall causes; as the *Novel. 123. §. Si pro Criminall. Si Ecclesiasticum negotium sit, nullam communionem habento Ciuiles Magistratus, cum ea disceptatione, sed religiosissimi Episcopi negotio finem imponunto*. If it bee an Ecclesiasticall suite, let the Ciuill Magistrates haue nothing to doe there with that *Plea*-, but let the Bishops ende it. Yet hee saith, in the Saxons time P. 412.
such *Pleas* were in the Hundred Court, before the Bishop and Sheriffe of the County, as out of the Lawes of King *Athelstan*.

But this annexing of the Sheriffe, was onely for aide of obtaining, not as to exercise iurisdiction in cognisance of the right: Answerable to the law of *Hlotharius* or *Charlemain*. *Leg. long. lib. 3. Tit. 3. c. 7. & in Addit. 4. ad Cap. cap. 73. A comite vel a misso nostro distringatur*, let him bee distrained by our Shrieue or messenger: And to *Charles the Great*, his addition to the Lawes of the *Bauarians* n. 10. And to the *Canon in Synodo Mogunt. sub Rabano. cap. 7.* where, in cases of Tythes the Lay-officer is added for execution.

P. 413.

But in the *Normans* time this *Hundred Court* for spirituall cases was forbidden;

Animad. 2.

And the *Bishop* or *Arch-Deacon* which did *Tenere placita*, that is, *Iudge causes*, in the *Hundred Court*, must appoint themselves places to heare such causes, because since in the *Hundred* all suites were brought *ad iudicium Secularium hominum*, that is of a *Iury*, the *Conquerour* therefore redressed it and distinguished the seates of *Iudicature*.

P. 414.

But after *Henry the second*, Tyths were exercised in both Courts, saith hee, as well *Secular* as *Spirituall*, and that by originall suite, for the *Spirituall Court* hee findeth one example in *King Stephens* time.

Animad. 3.

But to that let mee adde some out of our *Chartularies*.

In the confirmation of *William* Archbishop 1131. There it is said, *Decimas de Modingham, de quibus per Rectorem de Eltham, coram nobis fuerint impetiti, propterea ex consilio & assensu Iurisperitorum nobis assidentium, iisdem Monachis adiudicamus*. The Tythes of *Modingham* about which they were impleaded before vs by the *Parson* of *Eltham*, wherfore by the *Counsell* and assent of our *Lawyers* assessors with vs in the businesse, we adiudge them to the same *Monkes*. This in the dayes of *Henry* the first.

So *Theobaldus* in the confirmation to the *Priorie* of *Leeds*, *præcipue Decimam de Summerfelda quam in Synodo Cantuarie ante nostram præsentiam in iudicio dictus Prior distraxerat*, Especially the Tythes of *Summerfeld* which in a *Consistorie* at *Canterbury*, the same *Prior* before our presence did euict.

So *Richard* Archbishop made his confirmations vpon occasion of the suite before him, for the *Portion* of *Geddings*.

P. 415.

Some others might be produced of those times, and since, there is no question for the *Ecclesiasticall Iurisdiction*. Those *Appeales* to *Rome* in *Iohannes Sarisburiensis*, by him cited, may certifie, which after were forbidden, by reason of the immodest behauiour of *Thomas Becket*, who (to vse the discrete words

wordes of the same *John*, *Epist.* 150. *Dominum Regem & suos zelo quodam inconsultius visus est ad amaritudinem prouocasse, cum pro loco, & tempore, & personis, multa fuerunt dispensanda,* He seemes to haue prouoked his Lord the King to bitterneffe with an vnaduised zeale, whereas for respect of time, place, and person, much was to be remitted and dispensed with) thereby did alienate altogether the King from Ecclesiasticall proceedings, who then forbade, the then vsuall courses of Appeales (which were the chiefe of those *Antea consuetudines*, in the Epistle cited 150.) that so all such Titles were for that time determined before the King, (the Archbishop and the other Bishops being in opposition to the King.) But for his examples; How *in the Kings case*; or of others, the parties being of other Prouinces; or the matters being Churches, wherein the Patronage was accounted Temporall; or the partie being *in the Kings service* out of the land, may alter the case (to which all his examples are to be reduced) I know not: Yet also that vsually the Secular power, though against the Canons & claime of the Clergie, would intermeddle in some cases, cannot be denyed; though our Authour acknowledge the direct Iurisdiction to belong to the Spirituall Court pag. 411. and vrgeth *Fleta* and *Breton* for it, pag. 428.

In the next Section, concerning the time after *Henry 2.* and King *John*, He sayth, the Secular Iurisdiction through feare, was almost out of vse in this kinde. Pag. 421.

But I am perswaded, and appeale vnto his reading, and the Iudgement of all the Lawyers, whether more frequent prohibitions, and claime of Iurisdiction in Tythes, haue not beene more since practised by the secular Courts, then euer before? as may hence against him appeare, That for the prooffe of it hee hath cited *no Prohibition, Fine, or Writ, or Record in all the following Paragraphs*, but after these dayes of feare, the dayes of *Henry 2.* and *K. John*: for after that, the Canons were more neglected, and the Secular Iurisdiction more increased then before; which I affirme against that odious passage in his *Reniew*, wherewith hee ends his Treatise, whereout

whereout, it may be, others may picke more sacriledge then he meant. And therefore leauing him in the following Law-passages, to be examined by some Lawyers, who may either finde him altering the question from Tythes to Aduoufon, (asto my vnderstanding healtogether doeth) or to be otherwise erring in his Collections, I desist from further answere of his *more feared* then *fearefull booke*. Onely for a Corrollarie, desiring of both Iurisdiccions, and *the King* the Head of both; that since so *many godly* and *gracious Lawes* and *Canons*, in former ages haue beene made, and with such conscience by our Ancestours regarded; that the sacrilegious Tythe-robbers, by pretence of *new Customes* and *Considerations*, may not be countenanced; but euen the olde customes and rates of things, as in those times they were worth, may in time be remitted: For with what conscience may a man retaine his Tythe, and pay for it but a penie or halfe-penie, which is now xij. pence, or ij. shillings? And why should the Tenth be lesse worth, then any other of the Nine parts are? that so God may haue his right, and all may haue Gods blessing.

A N I.

ANIMADVERSIONS
vpon such Passages in the Review,
which either that worthy Knight

SE. JAMES SEMPILL hath not
confuted, or are in the Booke
before remembred.



Auing read the *Booke*, and then seeing the Title of a *Review*, I hoped some religious *retractation* or *recognition* (what by the conscience of the weaknesse of his proofes, and what by the censures of his booke) should haue beene published *ut secundas partes habeat modestie qui primas non poterat habere*

Sapientia. But that partiall conceipt which each man hath to the child of his owne braine, especially younger men , hath engaged him herein to defend with strange resolution, what against all trueth he had affirmed : Whereof, since in many places of my former *refutation* I haue made mention, and in some others , am happily preuented , I will onely insist against those passages which are pretermitted.

And to beginne, I must passe to the 4. Chapter wherein a new Quotation of that Great Father *Epiphanius* is proposed and insisted vpon ; to prooue, that neither then Tythes were paid, nor to be paid , because meereley ceremoniall , as Circumcision , and the like. The place quoted is in *Hæresi* 50. of the *Tessares-decatæ* of whom *Epiphanius* saith , that, *except this Hæresie of celebrating Easter on the fourteenth Moone* Πάντα ἔχουσιν ὡς ἡ Ἐκκλησία, *They haue all things as the Church*. But for the defence of this Hæresie they proposed the curse of the Law against those that did otherwise ; To which *Epi-*

F f

phanus

phanus answereth, *That so the Law curseth the uncircumcised, and μὴ ἀποδεκατέρες, those that did not offer at Hierusalem; Ranking Tythes amongst abrogated Ceremonies, which they also yet agreeing in all things with the Church, did not, as may seeme, obserue.*

Animad. I.

Damascen de Imaginibus Orat. 1. in another case, saide of Epiphanius; *Una hirundo non facit ver, neque unius oratio tanti ponderis est, ut totius Ecclesie ab ortu ad occasum Solis propagata, mores & instituta possit euertere; one Swallow makes no summer; neither is the speech of one so weightie, that it may ouerthrow the manners and ordinances of the whole Church scattered from East to West. I will not say so of Epiphanius: Neither will I say as our Authour; He did not sufficiently vnderstand; and neither will I reprehend him for this, as he is reiected by all for his opinion of the feast of Christs Natiuitie, but make answer from his owne sense by repetition of his former words. At hi quidem omnia habent velut Ecclesia, aberrant autem ab omnibus, eo quod non consequentie & doctrine rituum attendunt, Iudaicis adhuc fabulis addicti, & neque equalia ipsis docent; But these haue all things like the Church, yet they erre from all, because they obserue not the consequence and doctrine of the Rites of the Church, but still being addicted to Iewish fables, yet doe not holde all as they doe. Whence appeares, though, as after it is said, they agreed in the principles of Religion, of the Trinitie, of the Bookes of Scripture, the Resurrection of the Dead; yet that in these Rites of the Church by consequence deriued from the Doctrine (of which sort are Tythes) they did erre, and being addicted to the Iewish ceremoniall Law, they would obserue the day of Easter in the same time as theirs was obserued, for feare of a curse; and yet would not Tythe as they did, and to whom, and where they did, nor bee circumcised; since alike they should obserue the one as the other, if they regarded the curse of the Law. So that here Epiphanius may seeme to ranke no Tything with Circumcision, but such as was in the circumstance Iudaicall; not to condemne Tything as he doth Circumcision,*

cumcision, but onely Tything to such persons as Legall Priests were, and in such places as the Law præscribed: This place makes not against the substance of Tythes, but the manner and place of Tything, and herein directly followeth *Eusebius Demonstrat. Euangelicarum, lib. 1. cap. 10.* Whereas to omit his opinion as vncertaine elsewhere; For the practise of these times, Saint *Chrysostome* his opposite, and Saint *Hierome* his defender against *Iohn of Hierusalem*, in the condemnation of *Origene*, may testifie, whose authorities both for the practise and right, appeare in the *Catalogue*, and in other places.

In the sixt Chapter, reuiewing his opinion of *Arbitrarie consecrations*, in the third 400. yeeres, he puts this Demurre to the consideration of the Reader; *How otherwise could the Founders and Benefactors of Monasteries, haue made Tithes part of their Endowment?* The answer is ready.

By translating anciently consecrated Tithes, by the consent and authoritie of the Bishop, for so Founders and Benefactors did assure them to Monasteries. Animad. 1.

But thence he inferres, the validitie of the Donors act, for that *Confirmatio ex proprio significato denotat firmitatem actus confirmati*, as *Panormitan*: And, *Nihil iuris noui tribuit, sed tantum vetus confirmat*, as *Innocent 4. ad dictum locum, &c.* P. 478.
Ad Tit. de Decimis, Cap. Dum, num. 11.

But first, in these conueiances of Tithes, the acte of the Bishop was not onely a *confirmant*, but a *concedent*, and *confering* acte, as by the forme of *Gundulphus* in his Charter, and of all such, which at the time of the Donation gaue their authoritie. Animad. 2.

And secondly, some confirmation may bee *ad solemnitatem actus*, and so giue no right, others, *ad necessitatem actus*, without which, is no valide acte.

And thirdly, the distinction of *Angelus de Clauasio in summa, Verbo, Confirmatio summi Pontificis*, may limit those rules. *Confirmatio summi Pontificis ex certa scientia, facit validum, quod erat nullum respectu iuris positini; facit firmum, quod aliàs est infirmum; solemne, quod non est solemne, supplendo defectus solemn-*

tatis omiffa. Si vero fiat in forma communi, non ex certa scientia, nihil iuris tribuit, sed solum vetus confirmat: The confirmation of the Pope out of certaine knowledge, maketh that to bee valide, which was voyd in Law; maketh that strong, which was otherwise weake; that folemne, which was not folemne, fupplying the defects of folemny omitted: But if it be made in common forme, not out of certaine knowledge, it giues no right, but onely confirmes the old.

But he proceedeth, and alloweth, that fince, *about the yeere 1200. fuch grants, euen with confirmations after were difallowed, as appeares out of the Canon of Innocent 3. Tit. de his. q. f. a præl. cap. 7. cum Apoftolica. and, Tit. de Decimis c. dudum.*

Animad. 3.

But the *first place* is very falſely alledged, fuch graunts by the conſent of the Biſhop, being *there* allowed; and, *Conſtabit ipſa Donatio, perpetua firmitate ſubnixæ*, are the words. In the ſecond *place* indeed, the grant is difallowed, though confirmed by the Pope, but why? becauſe the Tithes were before *debitæ* to another Church, which had giuen no conſent by the Biſhop, whoſe right might not be impeached, and a ſufficient præſcription, ſince the confirmation could not bee proued. This illation therefore out of theſe places, is not good, neither vntill after the Councell at Lyons vnder *Gregorie* the tenth, concerning whoſe times the three Monkes ſpeake, were grants with confirmations difallowed. Theſe are therefore *false*.

And ſo is another which he adds, *more false*: For hee ſaith, *Theſe two places, Tit. de his quæ ſunt à Prælat. &c. cum Apoftolica, and Titulo de Decimis, c. Dudum, are expreſly of New creations at leaſt, not of Infeodated Tithes, as euery Canonist will acknowledge.*

Animad. 4.

Yet the *first place* is plainely of Infeodated Tithes, and ends this concluſion with the interpretation of the *Lateran Councell* vnder *Alexander the third, Hoc autem de illis Decimis intelligimus, quæ Laicis in Feodum perpetuò ſunt conceſſæ*: But this I ſpeake of Infeodate Tithes. And in the *third place*, they cannot be *New created*, but, *Veſprimenſi Eccleſiæ debitæ, quas non*
per-

permitterent solui, due to that Church, which they would not suffer to bee payd. And they are commanded, *Non ulterius impedire, quo minus Decimas percipiat memoratas, &c.* Not farther to hinder, that the foresaid Tithes be not payd.

In the next place also, he attributed that to *subtiltie*, which was allowed for the peace of the Church (the claime of præscription of thirtie or fourtie yeeres) and was prætended before these last 400. yeeres, as himselfe hath shewed, by the example of *Goffridus Vindocinensis*, pag. 75. when such Consecratours, if any were, might haue bene named. But this præscription of Times in such Parochiall right, was euen in *Concilio Chalcedon. Can. 17.* decided, and so by Pope *Gelasius*, in *Epistola ad Siculos*, num. 2. where hee citeth the *Imperiall Lawes*, and both *Gratian* and the *Decretals* are full of prooffe. And those two *Canons*, *Tit. De præscript. c. 6. & 5.* quoted, doe not at all insinuate any such claime of prescription to countenance any such act of Lay consecration, but onely are *Canons in generall*.

After, he supposeth another *falsehood*, which, he saith, *seemeth certaine*; that the *Titles deriued by Lay consecrations*, were carefully concealed by the possessors, in such publike Records of their revenues as were of more common and open use, in their *Legall proceeding at the Cannon Law*.

Perchance hee hath not met with any, yet therefore let him heare this out of our *Chartularies*, that in most of the confirmations of the succeeding Bishops, whereof wee haue most vntill *Anno 1478.* expressly the *Donors* are named, for so in that yeere is the confirmation of *Iohn Russell*, Bishop of *Rocheſter*, And in all pleadings the ancient Muniments were exhibited, wherein the speciall Charters of the Donors and Bishops were shewed.

But for conclusion, he bewrayeth the noueltie of the opinion of Arbitrarie consecrations, euen arrogating (and well may he) this strange doctrine to his owne inuention, to which none else hath pointed at that wrote of this subiect, and therein hee perswadeth himselfe, that euery vnderstanding Reader

der will thinke them worthy his consideration.

P 470.

Animad. 7.

Concerning *Appropriations*, his consideration is answered in the Booke, and his inference, though it may seeme religious, Namely, that *because they are appropriated by the dedication and vomes of men, that therefore they may not bee prophaned to Lay mens uses*: Yet when they shall consider that these *Appropriations* and *dedications* (of new created Tythes forsooth) were onely intended to the maintenance of such places, which now by reason of the superstition there, they can willingly acknowledge to bee rightfully suppressed: Now the aime of their dedication, the Monasterie, being taken away (to the possessions whereof the *Donors* did by many *imprecations* vpon the detractors or detainers religiously binde them) what now vpon his supposition and prooffe shall hinder, but that *prophane Atheists* (who will waue the right *De Iure Diuino*) shall thinke they may without scruple of conscience retaine them. For they will say, these Tythes, *not before in conscience due*, were consecrated to such a Monasterie, Now the Monasterie being dissolued, who hath right to them? By the Donors gift none; he gaue them for euer; Hath the King? Then we may buy it, say they; Therefore with a safe conscience we may keepe it: Let all the curses of the Donors, light on the dissoluer of the Monasterie, but vpon vs who bought it for a valuable consideration; no curse can fall: But if hee and our Authour consider the Diuine right, then such euasions as *Ciwill Titles, customes, exemptions* can nothing free the conscience of sacriledge, but that he may feare a *destruction to himselfe, who denoureth what is holy*.

But He knoweth better then I, that if an house of Religion had beene dissolued by death or cession of the Religious, or otherwise before the Statutes of dissolution of Abbeyes, &c. In that case all appropriations belonging to it should haue beene presentatiue, and the patronage should haue reuerted to the heires of the Donors, and the Tythes to the Parish Priest, whose they were by *Diuine right*; since he did the dutie of Tythes: And let those that hold impropriations,

tions, in their consciences waigh their Title, with Gods right in Tythes.

In another Section of this Chapter He speaketh of *Episco-* Pag. 472.
pall right in Tythes: And after some examples out of *Krantzius* (whom before hee so scoffed at) he remembreth a passage in *Helmoldus Hist. Silau. cap. 29.* Where Gerold Bishop of Oldenburg, writing to the inhabitants of the Deserts of *Wagria*, to pay him Tythes, amongst other passages, he saith, *Præceptum cui obedierunt Patriarchæ, Abraham scilicet, Isaac, & Iacob, & omnes qui secundum fidem facti sunt filij Abrahæ, per quod laudem etiam & præmia æterna consecuti sunt, Apostoli quoque & Apostolici viri hoc ipsum ex ore Dei mandauerunt, &c.* A precept to which the Patriarches *Abraham, Isaac* and *Iacob* obeyed, and all these that through faith are made the sonnes of *Abraham*, by which they obtained praise and euerlasting rewards; The Apostles also and Apostolicke men, haue taught this from the mouth of God. Here he insults, saying, *It seemes he was in some confidence, that because he was Bishop, he might make them beleue any thing of the Patriarchs and Apostles. And you may see, that he loued the profit of the Tythes so well, that hee would stand upon any unluckie venturing his credit in Diuinitie, or upon offering a plaine falshood in writing for them. For though they were due generally as he would haue them, yet how would he haue pro- ued, that all the Patriarchs, as the sonnes of Abraham paid them, or that thereby all had gained præmia æterna; or whence could he haue iustified it, that the Apostles had ordained it?*

If the Authour did not through the sides of this Bishop, *Animad. 8.*
 striue to shew his opposition against the *Diuine right* (whereas he protesteth in the *Preface of his booke*, that he writes not to oppose it) he would neuer haue so needlessly opposed that in him, which all that holde Tythes to be *de lure Diuino*, dare, and doe defend it: namely, that all the *Patriarchs* and faithful did, or ought to haue paid Tythes; & that obseruing this and the other Commandement, they went to Heauen. Let *Concil. Aquense. ann. 837. c. 18.* be considered; *Quod Melchizedec Sacerdos Dei altissimi Typum gesserit Christi, Catholica sentit*

sentit Ecclesia, quod ei Abraham ex omnibus Decimas dedit, ipsius Abrahæ ingentia commendantur præconia, quem imitantur, qui Sacerdotibus Christi ob illius honorem & amorem decimas dant, & ab illius merito sequestrantur qui Deo oblatas Decimas auferunt: That Melchizedek the Priest of the high God, was a Type of Christ, the Church knoweth. Abraham for giuing Tythes of all, is commended greatly, whom they imitate, who for the honour and loue of Christ, paide Tythes to his Priests; and they are separated from his merite, who take them away. They are the sonnes of Abraham that doe the workes of Abraham. As for the Apostles their tradition and ordination, how many of the ancient learned haue acknowledged, vide Catalogum.

Page. 473.

The next passage is to disgrace the claiming of Tythes, by a speech of *Aimoinus in the life of Abbo*, where in the tumultuarie Councell of *S. Denis, cap. 9.* the Monke in fauour of *Abbo* and his Couent, relates, how when the Bishops met, *secundum vulgare prouerbiū cunctum suū sermonem ad Decimas verterunt Ecclesiarum; Which is, saith he, they went from the matter.*

Animad. 9.

And true indeed it was, if their intention were the matter of consideration, who were so farre from such consideration, that the Monkes and Laytie, who both enioyed the benefite of Tythes, profanely assaulted and wounded the same Bishops.

And here in that it is said, *Laicis ac Deo seruientibus Monachis*, To Lay-men and Monkes seruing God, he will not allow the distinct signification, but rather conceiue them *expositiue*, one of another, and by both, that *Monkes*, who in their esteeme were accounted *Lay-men*, were signified.

But then, why is the disiunctiue put betweene *Laicis ac Deo seruientibus Monachis*? Why doe they call them *Lay*, whom they knew were of the *Clergie*? So was *Abbo* himselfe, *cap. 6.* a Priest, and others of his Monasterie: But the last words of the next Chapter before this, doeth plainly manifest it, since that *Abbo* himselfe in his *Apologeticum* doeth complaine

complaine of it; *Eft etiam alius error grauiffimus, quo fertur Altare effe Epifcopi, & Ecclefiam alterius cuiuslibet Domini, cum ex domo consecrata & Altari, vnum quoddam fiat quod dicitur Ecclefia, videte aquiffimi Principes, quo nos ducit cupiditas dum refrigefcat charitas*: There is alfo another moft grievous error, whereby it is faid- that the Altar is the Bifhops, but the Church belongeth to another Lord; whereas of a house consecrated and the Altar, is one thing made which is called a Church. See, yee iuft Princes, whither couetoufneffe leades vs when charitie is colde. And out of thefe words, who cannot collect *Lay-Infeodations*, which yet to haue been, our Authour is not willing to confefle, and therefore admits that interpretation.

After this Hee reuieweth Infeodations, and would not admit them from the Church; And therefore whereas *Bertrandus de Argentrè* brings this Argument, *If Infeodation of Tythes had not come from the Church, then had the Tythes payed Tythes alfo to the Church, by reason of the many Canons to pay Tythe of all Annually increafe*. Pag. 474.

This he answereth, by fupposing his owne *paradoxe*, which neither Canonift nor Diuine will graunt him; nor hee can proue, though he call it *the known beginning of Tythes* created and consecrated to Monasteries by Lay-men: for, faith hee, *the same might be objected against them fo consecrated*; And if fo consecrated and not Translated from Bifhops or Churches, fo they might and ought; But the New Creations (forsooth) as thefe Infeodations came from Churches: And his answer is vaine, grounding vpon that, which being his owne inuention, he should haue knowne to haue beene admitted, before he had framed fuch a comparifon. And for that parte of the Argument, that becaufe of the Churches many Canons, *it is likely they should haue payed Tythes if not from the Church*, Hee strangely enueyeth againft fuch Arguments, as *ridiculous, and groffe, and childish*; Which if the Canons were but words without penalties annex, and all men muft in charitie be thought difobedient and irregular, then they might

Pag. 79.

easily be contemned and an *Argument from præceptum, ergo factum*, would be as weak, as a posse ad esse. But the Canons were otherwise, and so should his censure and his answer haue bene, who should maintaine a *lawfull practise*, and as hee boasteth, *allowed clearely by the Clergie*; or else ground all hee speakes vpon *abuses*, which to make the *consciencs of men* afraid of if they did alter, is worse, then deseruing such Titles.

Animaduer-
sions on the
last Chapter.

From thence, I passe ouer to the last Chapter, for the next is onely a *defence of the Common Law*, which *P. Blesensis* calleth *Consuetudinarium, & Seculare ius*, Ep. 25. and the Eight is, the *historie of William the Conqueror*, and a *defence of the language of the Common Law*, which is so contemptible among the many *pettie lazie ignorants*.

And in the last Chapter, is an *honest passage* from the ground before, of Arbitrary Consecrations against Impropropriations, (but the danger thereof I haue before discovered) and a *compassionate consideration* vpon the manner of the Dissolution in Henry the eight his time; to which he addeth *Rodericke Mors* his complaint to the Parliament, which is in his 14. Chapter of that Treatise,

P. 488. &c.

But his Conclusion is a *passage of odious consequence*, That the payment of Tithes in these last 400. yeeres, grew more regarded, by how much the Decretalls and Canons grew most dreadfull to Princes and subiect, to vrge this on to a continuall practise; and that with execution of the reigning Censures of the Church: And that the insolencie of the Pope and Clergie put these Canons and Decretalls more in execution.

Animaduersio.

The ill Sequele of this, in the conceipt of those, who in hate to the Church of Romes practise, and Decretall authoritie, (especially growing insolent) will bee glad to make conscience of their gaine, who cannot consider? when some forward *præcise Atheist* can say, This exaction of Tithes proceeded from Romes insolencie; Therefore let vs goe out of Babylon, say they, and wee le pay none.

But his conclusion is *all false*, For since these last 400. yeeres

yeeres there hath been lesse power of the Canons in practise; more customes maintained against the Church, *De modo Decimandi*, and *De non Decimando*; then euer before: The infolencies of the Pope gained contempt, not obedience: And the Charters of Kings to the Church were lesse fauourable then before. That of Richard the first, in the place cited (*who with great fauour gaue them an indulgent Charter of their Liberties*, saith he) what was it, but whereas the Clergie for his ransome, gaue great summes of money, he by that Charter promiseth that such their extraordinarie contribution should not bee taken as a *presedent* to taxe them for future occasion, *Nec hac vel alia occasione volumus dignitatibus Sanctæ Matris Ecclesiæ in aliquo vel eius libertatibus obuiare, sed pro omni posse nostro & seire (Deo volente) volumus omnem eius immunitatem & vniuersas eius dignitates, & libertates (ut dignū est) conseruare integras, & pro loco & tempore quibus licuerit augmentare*, Neither that by this or any other occasion wee would crosse the Liberties of the holy Church in any thing, but in what wee can and know (God willing) wee will preserue all their immunitie, and all their dignities and liberties safe, as is fit, and as time and place shall permit, will augment them.

Is heere any more then what Kings at their Coronations did then promise? and he for his ransome could doe no lesse. And yet in this Kings time was there not one Fine of Tythes leuied in his Booke p. 441? And some other Actions of discontent to the Clergie, although the remembrance of his miserie redressed, by the Clergie, did make him more respectfull then his Successors? And which is the Authors inference, was Parochiall right in his time so settled, but that many translations and appropriations to Monasteries were admitted, which vntill the seuenteenth yeere of King John his Successour, that is vntill the Councell of Lateran. 1215. (if then) was not restrained as in many places he doeth acknowledge? But in the time after, how many *petitions* of the Clergie, in generall, in particular for redresse of Tything? What *prohibitions* to interrupt the Iurisdiction, himselfe doeth in the 8. and 14. Chapters,

Chapters strive to proove. Let not therefore any be perswaded that the originall of exacting *Tythes*, was from the insolencie of the *Pope*, whose easinesse in granting *Exemptions*, giuing way to *Translations* and *Appropriations*, giuing approbation to the *Doftrine* of the *Schoolemen* herein, hath giuen occasion to all sacrilegious irregularitie.

Serm. 1 de Con-
uers. Pau. i.

So that the Clergie may say in S. Bernards words vnto God, *Egressa est iniquitas à Senioribus Vicarijs tuis, qui videntur regere populum tuum, — & ipsi in persecutione tua primi qui videntur in Ecclesia tua primatum diligere, gerere principatum* Iniquitie hath proceeded from thy Vicars, O God, who seeme to rule thy people, and they seeme to be the first in thy persecution, who both loue and haue the primacie of the Church.

Lib. 7. Indict. 2.
Epist. 91.

Epist 77.

And thus haue I passed this Authors Booke; of whom by his booke, I see that *Eloge* which S. Gregory gaue of *Barbatiannus* the *Monke* to be true of him, *Sunt bona quæ in eo placeant, sed hoc est in illo vehemens vitium, quia valde sibi esse sapiens videtur.* And that of S. Bernards of P. *Abelardus*, *Videtur plus nouitatis curiosus quam studiosus veritatis, granariq; de omni re sentire cum alijs, & dicere, quod aut solus non dixerit aut primus.*

August. confess.
lib. 3. cap. 3.

Lactanz. l. 1. c. 1.

And concerning his Booke, in it more paines then trueth, more strange reading, then strong reasoning; more quotations, then proofes; more will (God be thanked) then power; good to vse, but dangerous to beleue; a Historie of *Tythes*, but not true; not onely, but euen the Authours surname backward, *NEDLES*; or in summe, *Sacrilega curiositas, Arguta malitia.*

L O N D O N,

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